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No. 85-499

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

B.H. PAPASAN
SUPERINTENDENT OF EDUCATION, *et al.*,
Petitioners,

v.

WILLIAM A. ALLAIN
GOVERNOR, STATE OF MISSISSIPPI, *et al.*,
Respondents.

On Writ of Certiorari to
The United States Court of Appeals
For the Fifth Circuit

JOINT APPENDIX

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**I: EXCERPTS FROM THE PLEADINGS
AND THE RECORD BELOW**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

B. H. PAPASAN; [et al.]***

Plaintiffs

VERSUS

*** WILLIAM F. WINTER, GOVERNOR,
STATE OF MISSISSIPPI, [et al.]***

Defendants

CIVIL ACTION NO. DC 81-90-WK-0

COMPLAINT

1.

Equity will not suffer a wrong without a remedy.

2.

In this action, Plaintiffs invoke the jurisdiction of this Court and seek to rectify an invidious and unconstitutional deprivation and discrimination which was visited upon the schoolchildren in the Chickasaw Cession counties of Mississippi more than 140 years ago and to which they have been subjected continuously ever since. In the Northwest Territory Ordinance of 1785, the United States declared and mandated that the public schools of all states of the Union be adequately supported and maintained, and, to

that end, dedicated the sixteenth section in each township in perpetual trust for such support and maintainance. The Defendants named below, and their predecessors in office, have divested the public school children of the Chickasaw Cession counties of these lands and have failed to provide property, income or support of equivalent current value in lieu thereof. The deprivations suffered by these children are such that they have not been provided a minimally adequate level of education. Furthermore, the children in these schools have seen children in other school districts in Mississippi, which have income from sixteenth section lands enjoy financial resources and receive educational opportunities greatly in excess of those provided in the Chickasaw Cession counties. It is to remedy this wrong, this breach of trust, this unjust, inequitable and unconstitutional deprivation of the rights of the children of the Chickasaw Cession counties, that this action has been conceived and brought.

3.

Declaratory and injunctive relief are sought against the Defendants in their various official capacities, as described more fully below, on behalf of all school age children residing in school districts in the Chickasaw Cession counties, to-wit: Alcorn, Benton, Chickasaw, Calhoun, Clay, a small part of Coahoma, all of Desoto, Itawamba, Lee, Lafayette, Marshall, Monroe, Panola, Pontotoc, Prentiss, part of Quitman, a small part of Tallahatchie, all of Tate, Tippah, Tishomingo, Tunica, Union, part of Webster and part of Yalobusha Counties. Such relief is sought, *inter alia*, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and, accordingly, 42 U.S.C. § 1982

4.

Plaintiff school districts recognize that they are vested with control and management of all sixteenth section lands and lieu lands and that they have authority to bring suit

to establish the title to such lands and to redress violations of rights related to such lands. In order that such actions may be efficiently instituted and prosecuted, Plaintiff School Districts here seek to establish first the proposition common to all such suits—the unconstitutionality, illegality and invalidity of the original sales of the Chickasaw Cession Sixteenth Section Land and the Chickasaw Cession Lieu Lands. Thereafter, these Plaintiffs seek individualized relief in the form of orders mandating and directing that Defendants provide and make available to the school district plaintiffs, to be held by the School District Plaintiffs in perpetual trust, assets of income-producing capacity equivalent in value to that of the Chickasaw Cession Sixteenth Section Lands and/or Chickasaw Cession Lieu Lands of which Plaintiff School Districts and the Plaintiff School Children have been deprived. Plaintiffs seek, *inter alia*, declaratory, injunctive and other equitable relief.

8.

Plaintiff school districts are all situated in whole or in substantial part in the Chickasaw Cession territory, that is, those lands in the State of Mississippi generally lying north of a straight line drawn from the Southwest corner of Tunica County on the Mississippi-Arkansas boundary through the northern part of Coahoma County, continuing through Quitman, Panola, the northwest tip of Tallahatchie, Yalobusha, Calhoun and Webster Counties, then meandering easterly through Clay and Lowndes Counties to a point on the Mississippi-Alabama boundary (hereinafter referred to as "the Chickasaw Cession lands").

9.

Plaintiff school children, together with the members of the class they represent (as defined hereinbelow), all now reside in or hereafter will reside in and attend or be eligible to attend one or more of the various public schools within the Chickasaw Cession lands.

10.

As described more fully hereinafter, Plaintiffs for more than a century have been, now are being, and unless relief is granted by this Court, will continue in perpetuity to be subjected to arbitrary, irrational, invidious, unconstitutional and otherwise illegal deprivations and discriminations vis'-a-vis Mississippi's school children and school districts situated outside the Chickasaw Cession lands. Such deprivations and discriminations violate the rights of Plaintiffs guaranteed and protected by Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution of the United States, and by the Equal Protection Clause of the Fourteenth Amendment.

11.

As and whenever used hereinafter, the phrase "Plaintiffs and the Plaintiffs class" shall, and unless otherwise expressly provided to the contrary, mean and include

(a) the named Plaintiffs county boards of education and school districts, including their respective superintendents, board members, trustees or other governing chief executive officials, as named in Paragraph 6 of Section III(A) of this Complaint,

(b) the named Plaintiff school children, individually and by and through their parents, guardians and next friends, as named in Paragraph 7 of Section III(A) of this Complaint,

(c) all school children residing in the Chickasaw Cession counties and attending or eligible to attend public schools operated by school districts in whole or in part within the Chickasaw Cession lands,

(d) all ancestors and predecessors in interest of any of the parties within the scope of (a), (b) and (c) above,

(e) all children who may in the future reside in the Chickasaw Cession counties or otherwise in the future be-

come eligible to attend public schools operated by school districts in whole or in part within the Chickasaw Cession, and

(f) all descendants or other successors in interest of any of the parties within the scope of (a), (b), (c), (d) and (e) above.

13.

State Defendants

(a) The STATE OF MISSISSIPPI is a Defendant.

(b) WILLIAM F. WINTER is an adult resident citizen of Jackson, Mississippi and is the Governor of the State of Mississippi in whom is vested the chief executive power of the State of Mississippi.

(c) (i) EDWIN LLOYD PITTMAN is an adult resident citizen of Jackson, Mississippi, and is the Secretary of State of the State of Mississippi in whom is vested, and who is charged by law with, general supervision, management and administration of all Sixteenth Section Lands in Mississippi and all Sixteenth Section Lieu Lands in Mississippi, and with the execution and delivery of all duly authorized conveyances of public lands.

(ii) By virtue of enactment of the State of Mississippi, effective January 1, 1980 [Senate Bill No. 2470, Laws of Mississippi, 1978, Chapter 458, as codified in MISS. CODE (1972), Sections 7-11-1, et al.], Defendant Pittman, in his official capacity as Secretary of State, became vested with all powers, duties and responsibilities theretofore vested in the State Land Commissioner and the State Land Office.

(d) CHARLES E. HOLLADAY is an adult resident citizen of Jackson, Mississippi, and is the Superintendent of Education in Mississippi in whom is vested, and who is charged by law with, the general supervision of the com-

mon schools and of the educational interests of the State. Defendant Holladay maintains his official office at 501 Walter Sillers State Office Building, Jackson, Mississippi.

(e) EDWIN LLOYD PITTMAN, WILLIAM A. ALLAIN and CHARLES E. HOLLADAY are all adult resident citizens of Jackson, Mississippi, and are all members of the Board of Education of Mississippi, and have been charged by law with the management and investment of the school funds according to law. Defendants Pittman, Allain and Holladay, in their aforesaid official capacities, maintain their offices at 501 Walter Sillers State Office Building, Jackson, Mississippi.

(f) A. MICHAEL ESPY is an adult resident citizen of Jackson, Mississippi and is an assistant Secretary of State in charge of the land office of the State of Mississippi, now a division of the Office of the Secretary of State. As an assistant Secretary of State, Defendant Espy is charged by law with the general supervision of the Sixteenth Section Lands of the State of Mississippi. Defendant Espy maintains his official office at 401 Mississippi, Jackson, Mississippi.

(g) A. MICHAEL ESPY, WILLIAM A. ALLAIN and EDWIN LLOYD PITTMAN are all members of the Lieu Land Commission, and have been charged by law with the management and administration of all Sixteenth Section Lieu Lands in the State of Mississippi. Defendants Espy, Allain and Pittman, in their aforesaid official capacities, maintain their office at 401 Mississippi, Jackson, Mississippi.

14.

(b) The term "State Defendants" whenever used herein means and shall be deemed to include all of the Defendants listed in paragraph 13, jointly and severally, in their official capacities, together with their predecessors in office, their

successors in office, all agents, servants, employees and subordinates of each, together with all persons acting under the direction of or in concert with each, plus the State of Mississippi, including any relevant or appropriate agency, department or political subdivisions thereof.

15.

The State Defendants, and each of them, and their predecessors in office, were at all times relevant hereto acting under color of law within the meaning and contemplation of 42 U.S.C. §1983 at the time of each and every violation and/or deprivation of the rights of Plaintiffs as described more fully elsewhere herein.

IV. CLASS ACTION

A. The Plaintiff Class

16.

(a) The above named Plaintiffs file this Complaint in their respective individual and official capacities described hereinabove, and on behalf of all other similarly situated, to-wit:

All children residing in the above named counties within the Chickasaw Cession who are of school age and all children residing in or who may in the future reside in said area and who may in the future become of school age and all children who at this time are attending or who may in the future attend the public schools in any of said school districts and counties and within the Chickasaw Cession territory.

V. FACTS

17.

(a) Pursuant to Section 211 of its Constitution of 1890, the State of Mississippi has declared and provided that all sixteenth section lands shall be reserved for the support of the public schools. Section 211 prohibits the state from parting with the possession and control of sixteenth section lands except for a definite and comparatively short period of time. This provision that sixteenth section lands be set aside, reserved and held in trust for the use and benefit of the public schools dates back to 1817. Mississippi Constitution of 1817, Article VI, § 20.

(b) In 1978 the Mississippi Legislature enacted into law an act relating to the management of sixteenth section school lands. Laws of Mississippi, 1978, Chapter 525, also referred to as Senate Bill No. 2430. This enactment in Section 5 thereof [now codified in MISS. CODE (1972) 29-3-1(1), as amended] provided that

Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such.

This enactment was and is declaratory of the law as it is and as it has been—with respect to the Chickasaw Cession Lands and/or Chickasaw Cession Lieu Lands—continuously since at least April 7, 1798.

21.

By statutory enactment effective April 7, 1798, the United States authorized the establishment of a government in the Mississippi territory (which included the Chickasaw Cession Lands). This enactment had the effect of applying to said territory all of the terms, provisions and conditions of the Northwest Ordinances of 1785 and 1787, and provided further that the people in said territory were entitled to the same rights, privileges, and advantages as the peoples of the Northwest Territory

in as full and ample a manner as the same are possessed and enjoyed by the people of [the Northwest Territory]. 1 Stat. 549, 550 §6.

These "rights, privileges and advantages" included reservation of a Sixteenth Section lands for the use and benefit of the public schools.

22.

On April 14, 1802, Georgia and the United States entered into a compact by which Georgia ceded to the United States the territory which now is included in Mississippi, including the Chickasaw Cession lands. This compact further provided that the territories included could be admitted to the Union as states on the same conditions and restrictions, with the same provisions, and in the same manner as is provided in the aforesaid 1785 and 1787 Ordinances of Congress for the government of the western territory of the United States.

23.

By statutory enactment effective March 3, 1803, the Congress of the United States provided for the disposal of lands in the Mississippi territory. 2 Stat. 229. This enactment expressly provided, without exception for the Chickasaw Cession lands or any other lands, that

the section number sixteen . . . shall be reserved in each township for the support of schools within the same.

24.

By statutory enactment effective April 21, 1806, the United States provided for the situation where it might develop, upon survey, that lands in Section 16 had already been sold, the Secretary of Treasury shall locate another section, in lieu thereof, for use of schools, which location shall be made in the same township, if there be any other vacant section therein, and otherwise, in an adjoining township. 2 Stat. 400, 401 §6.

25.

On March 1, 1817, the Congress authorized the formation of the State of Mississippi. 3 Stat. 348. One of the provisions of the act of statehood was that the state so formed and its government so organized

when formed, shall be republican, and not repugnant to the principles of the ordinance of the 13th day of July, 1787, between the people and the states of territory northwest of river Ohio, so far as *the same has been extended to the said territory by the articles of agreement between the United States and the States and the State of Georgia, or of the Constitution of the United States.* [Emphasis added].

As explained in paragraph 22 above, one of the provisions of the agreement between the United States and Georgia, now made applicable to Mississippi, was that Sixteenth Section lands should be reserved for the use and benefit of the public schools. This reservation, as noted above, had been expressly made applicable to Mississippi by the Act of March 3, 1803.

26.

A further recognition of the inviolability of the dedication of all Sixteenth Section lands (including the Chickasaw Cession Sixteenth Section lands) in trust for use and benefit of the public schools is the Act of March 3, 1817. 3 Stat. 375. In this Act, the United States appointed a surveyor to survey all lands south of Tennessee and north of Fort Williams and directed that he survey said lands according to the law. Thereafter, such lands were to be offered for sale

with the exception of the Section No. 16, in each township, which shall be reserved for the support of the public schools therein, . . .

27.

By the Treaty of Pontotoc Creek, signed October 20, 1832, between the Chickasaw Nation and the United States, the Chickasaw Indians were removed from the lands comprising the Chickasaw Cession. [footnote omitted] All claims of the Chickasaw Indians in and the lands in the Chickasaw Cession Territory were thereby extinguished. Pursuant to the Treaty, all of the lands were to be sold to private parties with the proceeds of the sale were to be sold to private parties with the proceeds of the sale to be delivered to the Chickasaws. This was done by patents and other instruments of conveyance made and given in the name of the United States under the hands and seal of the President of the United States and other subordinate officers of the United States, i.e., the Federal Defendants.

28.

Both the Treaty and the sale of lands pursuant thereto violated the spirit and letter of the ordinances and enactments described hereinabove, and of the perpetual trust created as described above, in that the Sixteenth Sections were not reserved. Rather, these Sixteenth Section lands were sold off by the Federal Defendants into private hands as with all other lands comprising the Chickasaw Cession.

29.

In 1836, in recognition of the illegality of the sale of the Sixteenth Sections under the Treaty of Ponotoc Creek, the United States provided that each of the twenty-four Chickasaw Cession counties should select as lieu lands 640 acres for each 23,040 acres in its county. The United States further provided by enactment dated July 4, 1836, that such lands, once selected

shall vest in the State of Mississippi, for the use of schools within said territory in said state, so ceded by the aforesaid by the Chickasaws; and said lands, thus selected, shall be holden by the

same tenure, and upon the same terms and conditions, in all respects, as the said State now holds the land heretofore reserved for the use of the schools in said State. 5 Stat. 116, §2.

The Chickasaw counties then selected, subject to the above described provisions, approximately 174,555 acres in Bolivar, Coahoma, Tallahatchie, Quitman, Panola and Leake Counties. These lieu lands, therefore, became impressed with the same trust subject to the same terms, conditions and uses as the original Chickasaw Cession Sixteenth Section lands. These lands so selected are hereinafter referred to as the "Chickasaw Cession Lieu Lands".

30.

In 1848, Mississippi purported to authorize the sale of ninety-nine (99) year leases of the Chickasaw Cession Lieu Lands, renewable to the lessee or his heirs or assigns forever. Miss. Laws (1848), ch. 3, §§1 and 2, effective February 7, 1848. By reason of its being in derogation of the trusts created as explained elsewhere herein, this act was unlawful and void.

31.

Thereafter, the State Defendants, wholly without authority of law and in derogation of trust and the constitutional and statutory rights of Plaintiffs and in derogation of the trust expressly created by the aforesaid Act of July 4, 1836 and otherwise arising by implication of law, sold the Chickasaw Cession Lieu Lands to private persons.

32.

(a) In 1852 the United States, wholly unlawfully and in derogation of the trusts previously created, purported to ratify the sales made under the aforesaid Act of 1848 and purported grant to the State Defendants the authority to sell all lands in the State of Mississippi theretofore reserved for the use of the schools. 10 Stat. 6. The act

further provided that the proceeds of the sales of said lands should be invested

for the use and support of schools within the several townships and districts for which they were originally reserved and set apart, and for no other use, or purpose whatsoever.

As mentioned above, the Chickasaw Cession Sixteenth Section and Lieu Lands were sold and/or had their sales ratified under this enactment but the proceeds thereof were not set aside and reserved as provided therein. Rather the funds were invested by the State Defendants in unwise, imprudent and unlawful investments - wholly outside the lawful investment powers of trustees and other fiduciaries with respect to the properties held by them in trust. By reason of the defaults of the State Defendants, these investments have all failed and the funds have accordingly been lost.

(b) The aforesaid act of May 19, 1852, further provided that no sales of Sixteenth Section or Lieu Lands could be made without consent of the inhabitants of such township or district having lawfully been obtained. Such consent has never lawfully been obtained. More specifically, such consent has never lawfully been obtained from Plaintiffs and the Plaintiff class, minors all.

(c) As indicated above, the same enactment purported to ratify all sales theretofore made. Such ratification, being in derogation of a perpetual and irrevocable trust the beneficiaries of which were, are, and always will be, minors, was and is unlawful and void.

33.

By enactment dated March 3, 1857, in further derogation of the trust created as aforesaid, the United States purported to ratify all previous sales of Chickasaw Cession Sixteenth Section Lands and to authorize sales of all other such lands.

34.

In addition to the powers and duties vested in the Secretary of the Treasury by the Act of April 21, 1806, the United States of America, on or about February 26, 1859, in an enactment subsequently amended and now codified in Title 43, United States Code, Sections 851, et seq., made provision that, where sixteenth section lands had been subjected to private claims, other lands of equivalent value were then (and to this day remain) appropriated and granted to the states and their respective political subdivisions (such as the School District Plaintiffs named in paragraph 6 above) subject to the same trust for the benefit of the schools. The lands so appropriated were made subject to selection by the respective states in accordance with the terms, provisions and restrictions of 43 U.S.C. §852. Under that statute, the State Defendants and their predecessors in office have since February 26, 1859, had the right and the duty to select and acquire, for the use and benefit of Plaintiffs and the Plaintiff Class, appropriate and equivalent lieu lands. On information and belief, the State Defendants have wholly failed and refused to select and acquire such lieu lands.

36.

In addition, the United States and/or the State of Mississippi now own or have some right, title and interest in valuable real properties (including but not limited to oil, gas and mineral rights and interests) other than Sixteenth Section Lands, which properties could, in the alternative, be made available to Plaintiffs as new lieu lands.

37.

From 1798 until the present, the Defendants have guaranteed to and secured to all other school districts and school children in Mississippi in perpetuity the full use and benefit of Sixteenth Section lands in their respective townships and counties.

38.

The discriminations between Plaintiffs and the Plaintiff class, on the one hand, and all other school districts and school children in Mississippi, on the other hand, as aforesaid, are the result of deliberate, intentional and purposive actions by Defendants and their predecessors in office. These discriminations have not resulted from natural differences in the value of properties or other factors not intended by Defendants or beyond Defendants' control.

39.

As a result of the aforesaid deprivations to Plaintiffs and the Plaintiff class of the use and benefit of the Chickasaw Cession Sixteenth Section lands within their respective school districts, and/or of the Chickasaw Cession Lieu Lands, Plaintiff school children and the class they represent have been and will be deprived of a minimally adequate level of education.

40.

Neither the school district Plaintiffs nor the Plaintiff school children together with the Plaintiff class, have ever consented to, waived or otherwise acquiesced in aforesaid sales, first, of the Chickasaw Cession Sixteenth Section Lands, or, second, of the Chickasaw Cession Lieu Lands, nor, thirdly, any of the other illegal or unconstitutional actions of Defendants as described herein or as may appear upon full hearing hereof.

VI. CLAIMS

A. Declaratory Claims

41.

By reason of their derogation of the perpetual and irrevocable trust created as aforesaid, and their violation of the Northwest Territory Ordinance of 1785 as made ap-

plicable to Mississippi in the United States-Georgia Compact of 1802, those statutes of the United States, insofar as they purport to authorize, validate or confirm sales of the Chickasaw Cession Sixteenth Section lands and/or the Chickasaw Cession Lieu Lands, are unlawful, void and unenforceable, including but not limited to

- (a) the Act of July 4, 1836. 5 Stat. 116
- (b) the Act of May 19, 1852. 10 Stat. 6
- (c) the Act of March 3, 1857. 11 Stat. 200
- (d) any other acts of Congress having said effect.

Plaintiffs seek a declaratory judgment to the foregoing effect.

42.

By reason of their derogation of the trust created as aforesaid, and their violation of the Northwest Territory Ordinance of 1785 as made applicable to Mississippi in the United States-Georgia Compact of 1802, those statutes of the State of Mississippi, insofar as they purport to authorize, validate or confirm sales of the Chickasaw Cession Sixteenth Section and/or the Chickasaw Cession Lieu Lands are unlawful, void and unenforceable, including but not limited to

- (a) Act of 1848, Miss. Laws (1848), ch. 3
- (b) Any other similar enactments of the State of Mississippi.

Plaintiffs seek a declaratory judgment to that effect.

B. Derogation of Trust

43.

Effective at the time of statehood, 1817, the Chickasaw Cession Sixteenth Section Lands were impressed with an express/constructive trust irrevocably and in perpetuity for the use and benefit of Plaintiffs and the Plaintiff class, their ancestors and other predecessors, and their respective descendants and other successors. The sale of the Chickasaw Cession Sixteenth Section Lands by Defendants

in 1832 and thereafter, as aforesaid, thus violated the terms of said trust and was in gross derogation of the rights vested in Plaintiffs and the Plaintiff class.

44.

As a result of the designation and setting aside of the Chickasaw Cession Lieu Lands pursuant to the Act of 1836, as aforesaid, said lieu lands likewise became impressed with an express/constructive trust irrevocably and in perpetuity for the use and benefit of Plaintiffs and the Plaintiff class, their ancestors and other predecessors, and their descendants and other successors. The sale of the Chickasaw Cession Lieu Lands by Defendants in 1848 and thereafter as aforesaid thus violated the terms of said trust and was in gross derogation of the rights vested in Plaintiffs and the Plaintiff class.

45.

As Trustees, the State Defendants have at all times relevant hereto had the duties

(a) to deal with, manage and supervise the properties held by them in trust in utmost good faith and fidelity towards Plaintiffs and the Plaintiff Class,

(b) to make no sales, investments, or other alienations of such properties except upon authority of law (which authority has never been and cannot lawfully be obtained) and only then for the best price reasonably obtainable therefor,

(c) to account to Plaintiffs and the Plaintiff Class at reasonable periodic intervals reporting in full and with candor upon their stewardship of the properties held in trust,

(d) wherever property held in trust has been unlawfully sold or otherwise alienated, to set aside, restore to or otherwise make available for the use and benefits of the beneficiaries - here Plaintiffs and the Plaintiff Class - such

real and/or personal property (including a fund of money) as may have a value sufficient to make up for that the benefit of which the beneficiaries would otherwise have had, and

(e) generally, to compensate the beneficiaries and make them whole for any and all losses sustained as a result of the Trustees' mismanagement or other breach of their fiduciary duties.

For breach of each of the aforesaid duties, Plaintiffs and the Plaintiff class assert a claim here to surcharge the State Defendants.

47.

As described above, the State Defendants, acting under color of state law, failed to reserve either the Chickasaw Cession Sixteenth Section Lands or the Chickasaw Cession Lieu Lands and to respect the trust to which those lands were subject and in which they were held. Accordingly, Plaintiffs seek redress and assert claims against the State Defendants for violation of rights created and secured to Plaintiffs and the Plaintiff Class by

(a) the Northwest Territory Ordinance of May 20, 1785,

(b) the Ordinance of July 13, 1787,

(c) the Mississippi Territory Act of April 7, 1798, 1 Stat. 549, 550 §6,

(d) the United States-Georgia Compact of 1802,

(e) the Act of March 3, 1803, 2 Stat. 229

(f) the Act of March 3, 1817, 3 Stat. 375,

(g) the common law of trusts as the same has been received, accepted and placed in full force and effect by the State of Mississippi, and

(h) other laws of the United States and the State of Mississippi as may be designated prior to trial.

Inasmuch as each ordinance or statute just described in subparagraphs (a) through (g) constitutes a "law of the

United States "Plaintiffs also assert a claim against the State Defendants under 42 U.S.C. §1983.

D. Due Process

50.

(a) By their past, present and future deprivation of Plaintiffs' and the Plaintiff class' rights to the use and benefit of the Chickasaw Cession Sixteenth Section Lieu Lands and/or the Chickasaw Cession Lieu Lands, Defendants have acted to deprive Plaintiffs and the Plaintiff class of protected, vested property interests, to-wit: their interests as beneficiaries of the trusts created as aforesaid, without due process of law. In this manner and in other ways to be shown at the trial of this action, Defendants have denied Plaintiffs' rights protected under the Fifth and Fourteenth Amendments to the Constitution of the United States and under Article I, Section 10, Mississippi Constitution of 1817, which is presently found in Article 3, Section 14, Mississippi Constitution of 1890. Plaintiffs accordingly assert a claim against Defendants under each of these constitutional provisions. In addition, Plaintiffs assert a claim against State Defendants under 42 U.S.C. §1983.

(b) The State of Mississippi has voluntarily and intentionally chosen to extend to all children, including Plaintiffs and the Plaintiff class, between certain specified ages the right to and opportunity for a free appropriate public education. Literally, for more than a century, a major and integral part of providing such education has been holding all Sixteenth Section Lands in trust for the use and benefit of the schools. The income derived from these Sixteenth Section Lands is a substantial source of the educational benefits so enjoyed. Having originally made these benefits available, the Defendants thereafter, as described more fully hereinabove, arbitrarily, unreasonably and without due process of law withdrew same from Plaintiffs and the Plaintiff class. By having thus deprived Plaintiffs and the Plaintiff Class of a substantial portion of their right and

entitlement to a free appropriate public education, Defendants have denied them rights protected under the Fifth and Fourteenth Amendments to the Constitution of the United States and under Article I, Section 10 of the Mississippi Constitution of 1817, which is presently found in Article 3, Section 14 of the Mississippi Constitution of 1890. Plaintiffs accordingly assert a claim against Defendants under each of these constitutional provisions. In addition, Plaintiffs assert a claim against the State Defendants under 42 U.S.C. §1983.

E. Equal Protection

51.

By their aforesaid past, present and future deprivations of and to Plaintiffs and the Plaintiff class of the use and benefits of their Sixteenth Section Lands, while at the same time granting to and securing to all other school districts and school children in the State of Mississippi in perpetuity the use and benefit of their Sixteenth Section Lands, the State Defendants have deliberately, intentionally, purposefully and with design denied to Plaintiffs and the Plaintiff class the equal protection of the laws in violation of their rights secured by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs accordingly assert a claim against the State Defendants under 42 U.S.C. §1983.

52.

As alleged more fully herein, the State Defendants acting under color of state laws have

(a) infringed upon fundamental rights of Plaintiffs and the Plaintiff class, and/or

(b) operated to the disadvantage of a suspect class, to-wit: Plaintiffs and the Plaintiff class. Accordingly, Plaintiffs' equal protection claims should be adjudicated under the strict judicial scrutiny test.

53.

By their aforesaid past, present and future purposeful and deliberate action, the State Defendants and their predecessors in office have absolutely, completely and permanently, denied to Plaintiffs and the Plaintiff class a fundamental right or interest, to-wit: their vested property right or interest (described hereinabove) in and to the Sixteenth Section Lands of their respective counties and school districts. By way of contrast, the State Defendants have assured and guaranteed to all other school children and school districts in Mississippi property rights or interests legally equivalent to those denied to Plaintiffs and the Plaintiff class. In so doing, the State Defendants have denied to Plaintiffs and the Plaintiff class the equal protection of the laws in violation of their rights secured by the Fourteenth amendment to the Constitution of the United States. Plaintiffs accordingly assert a claim against the State Defendants under 42 U.S.C. §1983.

54.

In addition, by their aforesaid past, present and future purposeful and deliberate actions, the State Defendants and their predecessors in office have absolutely, completely and permanently denied to Plaintiffs and the Plaintiff class a fundamental right or interest, to-wit: their rights to and interest in a minimally adequate level of education, or reasonable opportunity therefor. By way of contrast, the State Defendants have assured and guaranteed this right/interest to all other school children and school districts in Mississippi. The State Defendants accordingly have denied to Plaintiffs and the Plaintiff class the equal protection of the laws, for which Plaintiffs seek redress under 42 U.S.C. §1983.

55.

Here the disfavored class, Plaintiffs and the Plaintiff class as described hereinabove, is easily and objectively identifiable. The discrimination claim presented here reveals two classes constitutionally entitled to equivalent treatment by the State Defendants. The first class, Plaintiffs and the Plaintiff class, have been denied certain funda-

mental rights described elsewhere herein, while the same or equivalent rights have been guaranteed to and secured to all other school districts and school children in Mississippi. The creation of the two classes and the invidious discrimination worked against Plaintiffs and the Plaintiff class is without the remotest semblance of a rational basis. It is likewise wholly irrelevant and unrelated to the achievement of any legitimate state objectives. In the alternative, the means chosen by the State Defendants to effectuate the state's objectives (whatever those may be) are not rationally related to their achievement but rather work an invidious and totally unfair discrimination on Plaintiffs and the Plaintiff class.
[paragraph omitted]

G. Impairment of Obligations of Contracts

57.

Any and all actions of the State Defendants and their predecessors in office, which confirmed or ratified the sale of the Chickasaw Cession Sixteenth Section Lands in violation and derogation of trust, as aforesaid, constitute unconstitutional impairments of the obligations of contracts in violation of Article 1, Section 10 of the United States Constitution and of Art. 3, Section 16 of the Mississippi Constitution of 1890 and are therefore void. For redress, Plaintiffs assert a claim against State Defendants under 42 U.S.C. §1983.

58.

Any and all actions of the State Defendants and their predecessors in office through which the Chickasaw Cession Lieu Lands were sold, or which confirmed or ratified the sale of said lieu lands, in violation and derogation of trust as aforesaid, likewise constitute unconstitutional impairments of the obligations of contracts as aforesaid. For redress, Plaintiffs assert a claim against the State Defendants under 42 U.S.C. §1983.

H. Taking Without Just Compensation

60.

Any and all actions of the State Defendants through which the Chickasaw Cession Sixteenth Section Lands and/or the Chickasaw Cession Lieu Lands were sold or otherwise removed from the reservation and trust described hereinabove constitute a taking of the property rights and interests of Plaintiffs and the Plaintiff Class without due compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and of Article 3, Section 17 of the Mississippi Constitution of 1890. For redress, Plaintiffs assert a claim against the State Defendants thereunder.

VII. RELIEF

61.

Sitting as a Court of Equity, this Court has broad and flexible powers to formulate and decree remedies appropriate to vindicate the rights of Plaintiffs and the Plaintiff class and also to promote the best interests thereof, all consistent with the public interest and the legitimate private interests of persons who are or may be affected.

62.

Plaintiffs and the Plaintiff Class are entitled to be made whole. One way in which this may be done, and which the Court may order Defendants to do, would be the establishment (by legislative appropriation or otherwise) of a fund, to be held in perpetual and irrevocable trust for the use and benefit of Plaintiffs and the Plaintiff Class, having such amount of money or value contained therein as may reasonably be necessary.

(a) to provide annual income to the respective Chickasaw Cession School Districts hereafter at a level equivalent to the level income which each could reasonably expect to enjoy if said District still owned in trust its original Chickasaw Cession Sixteenth Section Lands, or its original Chickasaw Cession Lieu Lands, whichever are the most valuable, and, if said lands were utilized at their highest and best income producing use, *and*

(b) to compensate, reimburse and make restitution to each of said school districts for all income each would have received from 1832 until the present if each had been receiving the income from its respective Chickasaw Cession Sixteenth Section Lands, or, in the alternative, its respective Chickasaw Cession Lieu Lands, if such lands had been subjected to such reasonable use and prudent management (which would have included utilizing said lands at their highest and best income producing use) as would have been required of trustees holding properties in trust and as would have produced maximum levels of annual income, plus interest from the year in which such income would have been received, compounded annually.

65.

In the alternative and/or in combination, the State Defendants should be ordered and directed to acquire and make available for the use and benefit of Plaintiffs and the Plaintiff Class appropriate lieu lands of the same value as the original Chickasaw Cession Sixteenth Section Lands. State Defendants, among other means of so doing, may designate and select lieu lands as provided by 43 U.S.C. §852.

66.

In the alternative and/or in combination, all Chickasaw Cession Sixteenth Section Lands and all Chickasaw Cession Lieu Lands which are now held by either the United States or by the State of Mississippi, or any agency or

political subdivision of either of them, should be declared subject to the aforesaid trust.

67.

Plaintiffs and the Plaintiff class are aware that most of the Chickasaw Cession Sixteenth Section Lands and most of the Chickasaw Cession Lieu Lands are now claimed by persons who acquired said lands in good faith and for valuable considerations. Many of such persons have made valuable improvements on said lands and have otherwise in good faith relied to their detriment on the belief that they owned good title in and to such lands. Many mortgage lenders in good faith have advanced money against the security of such lands. Title insurance companies have in good faith written policies of title insurance on said lands.

Attorneys have in good faith rendered opinions respecting the titles to said lands. Plaintiffs are aware that the above described facts and circumstances would entitle them to a decree declaring all Chickasaw Cession Sixteenth Section Lands, or, in the alternative, all Chickasaw Cession Lieu Lands, to be held in trust accordance with Miss. Code (1972) §§29-3-1, et seq., as amended. Sitting as a court of equity, however, this Court has the power, and indeed, the responsibility to provide less drastic relief. There are many ways in which Plaintiffs and the Plaintiff Class may be compensated for their past losses and protected and made whole for the future short of a decree that the aforesaid lands be returned to the schools to be held in trust. The Defendants who have caused the losses and discriminations suffered by the Plaintiffs and the Plaintiff class, not the innocent owners of said Sixteenth Section Land and Lieu Lands. Plaintiffs hereinafter pray for such less drastic but nevertheless adequate remedies.

68.

Plaintiffs have suggested herein, and below prayed for, a variety of different forms of relief. First and foremost,

Plaintiffs seek and claim that they are entitled to the establishment of a trust fund formed and computed as described in Paragraph 62 above and in subsection (c)(1) of the Prayer or an order for an annual legislative appropriation in an amount necessary to make whole Plaintiffs and the Plaintiff class. Nevertheless, Plaintiffs suggest that provision of appropriate redress, remedy, and relief of and from the unlawful and discriminatory conditions and circumstances described above may require a combination of two or more of the various forms of relief suggested here and for which prayer is hereinafter made, or the development of still other forms of relief not mentioned here and the decreeing and implementation of same either alone or in conjunction with specific forms of relief suggested herein. All suggestion for and prayers for relief should be construed in this light and should be treated as individual prayers for relief, joint prayers, or as components forming part or the whole of an overall decree effectively making Plaintiffs and the Plaintiff Class whole and protecting and vindicating their rights.

IX. PRAYER

WHEREFORE, premises considered, Plaintiffs, individually and on behalf of the Plaintiff Class, pray

(A) that this action be certified as a class action and that Plaintiffs and their undersigned counsel of record be appointed as representatives of the Plaintiff class as defined in paragraph 16(a) hereinabove;

(B) that, after a full hearing and trial of the merits of this action, the Court will grant in favor of Plaintiffs and the Plaintiff Class a declaratory judgment which in substance will declare and adjudicate

(1) that, for reasons described hereinabove, the original patents and/or sales of the Chickasaw Cession Sixteenth Section Lieu Lands made by the Federal

Defendants were unconstitutional, illegal and without authority of law; provided, however, that inasmuch as most of these lands are now privately claimed by persons who are good faith purchasers of value who have relied substantially to their detriment on the validity of their respective titles in and to such lands, Plaintiffs seek as relief conveyance to them, subject to the above described trust, real and/or personal properties (including money) of equivalent income producing value rather than the return of the said Sixteenth Section Lands;

(2) that, for the reasons described hereinabove, the original patents and/or sales of the Chickasaw Cession Lieu Lands were unconstitutional, illegal and without authority of law; provided, however, that inasmuch as most of these lands are now privately claimed by persons who are good faith purchasers for value who have relied substantially to their detriment on the validity of their respective titles in and to such lands, Plaintiffs seek as relief conveyance to them, subject to the above described trust, real and/or personal properties (including money) of equivalent income producing value rather than the return of the original Chickasaw Cession Lieu Lands;

(3) that, as described more particularly hereinabove, Defendants and their predecessors in office have deprived and are depriving Plaintiffs and the Plaintiff Class of property and educational rights in which they have vested beneficial interest without due process of law and without due or just compensation therefor;

(4) that, as described more particularly hereinabove, Defendants and their predecessors in office have denied and are denying to Plaintiffs and the Plaintiff Class the equal protection of the laws;

(5) that, under the facts and circumstances described more particularly hereinabove, Defendants and their predecessors in office have denied to Plaintiffs

and the Plaintiff Class and deprived them of rights protected and secured to them by the Ninth Amendment;

(C) that, in addition, the Defendants, their successors in office, their agents, servants and employees, and all persons acting in concert with them, jointly and severally, be enjoined and directed to take such actions as may be necessary and appropriate to

(1) set aside and make available for the use and benefit of Plaintiffs and the Plaintiff Class, subject to the terms and provisions of the aforesaid perpetual and irrevocable trust, a fund or funds of such value and in such amount as may reasonably be necessary.

(a) to provide annual income to the respective Chickasaw Cession School Districts hereafter at a level equivalent to the level of income which each could reasonably expect to enjoy, if said District still owned in trust its original Chickasaw Cession Sixteenth Section Lands, or its original Chickasaw Cession Lieu Lands, whichever are more valuable, and said lands were given over to their highest and best income producing use, *and*, in addition,

(b) to compensate and make whole Plaintiffs and the Plaintiff Class for all income their respective school districts would have received from 1832 until the present if they had been receiving the income from their respective Chickasaw Cession Sixteenth Section Lands, or in the alternative, their respective Chickasaw Cession Lieu Lands, if such lands had been subjected to such prudent use and reasonable management (which would have included placing said lands in their highest and best income producing use) as would have been required of trustees holding properties in trust and as would have produced maximum levels of annual income, *and*

(c) to compensate Plaintiffs and the Plaintiff class for the interest that would have been earned on the funds computed as described in (b) above had

said funds been received annually and immediately thereafter invested at the best rate of interest then available, and further, had said fund remained so invested continuously until this time, with interest compounded, annually;

(2) acquire, set aside and make available for the use and benefit of Plaintiffs and the Plaintiff Class subject to the terms and provisions of the aforesaid perpetual and irrevocable trust appropriate new lieu lands (which may include offshore oil, gas and other mineral rights and interests owned by the United States and/or by the State of Mississippi);

(3) take any and all other steps or actions as may be reasonably necessary or appropriate to

(a) make available to Plaintiffs and the Plaintiff Class properties of value equivalent to the current fair market value of the properties unlawfully sold as aforesaid, or

(b) make available to Plaintiffs and the Plaintiff class in perpetuity income at such level as may be equitable and just, or

(c) eliminate and compensate and for the future guarantee and protect Plaintiffs and the Plaintiffs class against the above described denials and deprivation of their rights to due process of law and to the equal protection of the laws;

(4) develop, prepare and file with the Court, and subject to confirmation and approval by the Court, a plan for the orderly implementation of the declaratory and injunctive relief otherwise granted;

(D) that they be granted general relief; that is, that Plaintiffs and the Plaintiff Class be granted all relief to which they are entitled under the law and the facts, whether such relief in whole or in part has been specifically demanded herein or not;

(E) that the Court will fashion such other orders, injunctions, decrees and remedies as may be equitable and just to the end that the rights of Plaintiffs and the Plaintiff Class, as aforesaid, will be vindicated, protected and guar-

anteed consistent with the public interest and the orderly administration of equity and justice;

(F) that the Court will retain jurisdiction for such period of time after final adjudication of the merits hereof as may be necessary and appropriate to assure that the orders and decrees of the Court are fully implemented;

(G) that the Court will award to Plaintiffs and tax against the Defendants all Court costs, Plaintiffs' reasonable attorneys' fees and other legal expenses.

**MOTION TO DISMISS AND MOTION FOR ORDER
THAT THIS ACTION IS NOT MAINTAINABLE AS
A CLASS ACTION**

COME NOW the State of Mississippi and the other state defendants in their official capacities, and move this court to dismiss the complaint that has been filed in this action which seeks declaratory and injunctive relief as well as damages, or in the alternative, to issue its order that this action is not maintainable as a class action and in support thereof, would show unto the Court the following:

1. The complainants failed to state a claim against the state defendants upon which relief can be granted.
2. There is no alleged case or controversy between the plaintiffs and the state defendants so as to confer jurisdiction upon this Court.
3. The plaintiffs cannot bring this suit on behalf of a class based upon a cause of action in which they have no rights.
4. The practices, policies, conditions, laws and statutes and constitutional provisions which allegedly exist as to a particular plaintiff in a particular county confer no right upon the particular plaintiff to allege similar practices in other counties named in this action or in any of the other counties located in the State of Mississippi within the "Chickasaw Cession" or in the "Chickasaw Cession lieu lands".
5. There are not common questions of law and/or of fact common to the plaintiff class.
6. There are not questions and/or of fact common to the defendants.
7. The prosecution of separate actions by individual members of the plaintiff class creates no risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for these plaintiffs or for the various classes of plaintiffs.

8. The prosecution of separate actions by individual members of the plaintiff class would create no risk of adjudication with respect to individual members of a class which would, as a practical matter, be dispositive of the interest of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interest, if any.

9. The maintenance of this action as a class action would be unmanagable.

10. The allegations of the complaint conclusively show that the defendants named herein have taken no overt actions which would be detrimental to any of the plaintiffs and, therefore, there exists no common questions of fact as to each of the various named defendants.

11. No injunctive or declaratory relief can be granted in favor of the plaintiffs against the State of Mississippi and/or the agencies thereof and such claims are barred by the Eleventh Amendment to the Constitution of the United States.

12. The awarding of injunctive relief in favor of the plaintiffs and against the defendants in respect to absent plaintiff class members would be violative of rights guaranteed to the absent plaintiff class members by the Fourteenth Amendment to the Constitution to the United States.

13. The allegations contained in the complaint, the statutory law of the State of Mississippi, the statutory law of the United States of America, the Constitution of the State of Mississippi, the Constitution of the United States of America, and the decisions of the Courts of the State of Mississippi and of the United States, all of which this Court can take judicial notice, affirmatively show that the defendants have acted in no way to deprive the named plaintiffs and/or the class they seek to represent of any rights secured to them.

14. The plaintiffs have wholly failed to show the commonality or typicality required by Rule 23(a)(2) and (3)

and, therefore, the adequacy of class representation by the named plaintiffs and between the named plaintiffs has not been demonstrated.

15. The defendants enjoy absolute immunity from this cause of action.

16. The named plaintiffs have no standing to bring this cause of action.

17. The claims of the named plaintiffs are barred by the applicable statutes of limitation.

18. The claims of the named plaintiffs and the class they seek to represent are barred by the doctrine latches.

19. The treaties with the various indian tribes indiginous to these United States are the Supreme Law of the Land and, therefore, any claims by the plaintiffs seeking to override said Indian treaties must fail and are of no force or effect.

20. This complaint fails to conform to the provisions of Rule 8 of the Federal Rules of Civil Procedures.

21. The plaintiffs and the class they seek to represent are attempting to proceed under retroactive statutes and they are barred from doing so.

22. The plaintiffs and the class they seek to represent have no standing to maintain this action.

23. The plaintiffs are collaterally estopped from bringing and maintaining this cause.

24. The school board have not secured the authority to bring this action on against the state officials or state agencies.

Respectfully submitted,

THE STATE OF MISSISSIPPI, et al.

SPECIAL REPORT
ON
CHICKASAW CESSION
SCHOOL DISTRICTS

RAY MABUS
STATE AUDITOR

DICK MOLPUS
SECRETARY OF STATE

ISSUED
NOVEMBER 1984

INTRODUCTION

This is a special report that compares sixteenth section receipts with Chickasaw Cession receipts by Mississippi Public School District for the 1983 fiscal year. It provides a brief history of the Chickasaw Cession schools and some general concerns stemming from the lack of money available to Chickasaw Cession school districts.

The data for this report were taken from the annual reports filed by each local school district superintendent of education with the State Department of Education and from the Secretary of State's Biennial Report on sixteenth section lands. The figures were not audited by the State Auditor's office.

Affected Counties

The Chickasaw Cession school districts are comprised of the school districts in the following counties:

- | | |
|--------------|------------------|
| 1. Alcorn | 13. Panola |
| 2. Benton | 14. Pontotoc |
| 3. Calhoun | 15. Prentiss |
| 4. Chickasaw | 16. Quitman |
| 5. Clay | 17. Tallahatchie |
| 6. Coahoma | 18. Tate |
| 7. DeSoto | 19. Tippah |
| 8. Itawamba | 20. Tishomingo |
| 9. Lafayette | 21. Tunica |
| 10. Lee | 22. Union |
| 11. Marshall | 23. Webster |
| 12. Monroe | 24. Yalobusha |

Of These 24 counties, nine also have some sixteenth section lands:

- | | |
|------------|-----------------|
| 1. Calhoun | 6. Quitman |
| 2. Clay | 7. Tallahatchie |
| 3. Coahoma | 8. Webster |
| 4. Monroe | 9. Yalobusha |
| 5. Panola | |

BACKGROUND

The history of the Chickasaw Cession runs from 1832 to the present. A treaty of cession was made and entered into by General John Coffee, who was duly authorized by the President of the United States, and the whole Chickasaw Nation, in General Council assembled at the Council House, on October 20, 1832. The results of this treaty ceded the lands north of a line drawn from the southwest corner of Tunica County to the northwest corner of Lowndes County, embracing in whole or in part 24 counties. Terms of this treaty specified that lands should be surveyed and sold at an agreed upon minimum price, proceeds from which were to go to the Chickasaw Indian Tribe. The treaty is known as the Ponotoc Creek Treaty and was ratified on March 1, 1833, after which the immediate survey was authorized and land sales begun. As news spread that cheap land was available, it appears that buyers came and land sales were rapid, and it also appears that these rapid transactions contributed to the neglecting of sixteenth section reservation for the benefit of township schools. This mistake was noted and the United States Government, in an effort to correct this error, issued lands in lieu of those sold sixteenth sections in various parts of the state, most of which being given from lands the government owned in the Delta counties.

The total amount of land ceded in the Chickasaw Purchase was 6,283,804 acres. The 36th part of this amount was 174,555 acres, being the amount of land given in lieu of those sixteenth section sales. A review of the original survey approved February 8, 1838, reestablished the north boundary approximately three miles south of the Tennessee line and reduced the amount of acres to 6,071,169.2, but apparently the amount of lieu lands remained constant. The Mississippi Legislature in 1848 authorized a 99 year lease "renewable forever" at a price not less than \$6 per acre, the proceeds to be a charge upon the state to be held in trust. The total sale yielded approximately \$1,047,330. The 1856 legislature authorized the use of these

funds at eight percent interest to be paid to the counties in the Chickasaw Cession on a per acre basis. Loans were made to various railroad companies at an interest of eight percent. A legislative act in 1863 authorized the railroads to pay their indebtedness in gold, silver, or treasury notes of the state into the State Treasury to be used to defray ordinary state expenses. In so doing, the state bound itself to pay the interest to the various counties in the Chickasaw Cession. The railroad companies eventually defaulted in payments or made settlements with worthless paper resulting in almost a total loss. Since this time, the state Legislature has appropriated monies representing the amount of interest lost due to these investment failures; however, the amount of interest has been reduced to six percent since enactment of the 1890 Miss. Constitution, Section 212. The amount of this Chickasaw Cession school money appropriated by the legislature annually is \$62,191. (See Chapter 87 of the 1984 Laws). This amount if dispursed in equal payments on May 1 and November 1. The above amount represents approximately 36¢ per acre per year paid to the counties in lieu of possible returns that could be realized if the sixteenth sections in the Chickasaw District were still available for the utilization of township schools.

FINDINGS

For the 1983 fiscal year, sixteenth section school districts received revenues totaling \$27,811,603. Chickasaw Cession schools received their annual interest payment from the state of \$62,191. The revenues from sixteenth section lands have increased 467 percent during the past six years, from \$4,923,381 in fiscal year 1977 to \$27,811,603 in fiscal year 1983. Annual proceeds to the Chickasaw schools have remained unchanged during the period at \$62,191. Indeed, this level has not changed since 1922.

The discrepancy between the receipts for the two areas can be graphically documented in a comparison of receipts from adjoining counties. The average per acre receipts for

fiscal years 1982 and 1983 for Lafayette (Chickasaw Cession) and Grenada (Sixteenth Section) counties were 36¢ and \$9.06 respectively; for Monroe (Chickasaw Cession) and Lowndes (Sixteenth Section) counties, 36¢ and \$41.83; and for Tunica (Chickasaw Cession) and Coahoma (Sixteenth Section) counties, 36¢ and \$44.20.

Review of the per student implications of this contract offers an even greater discrepancy. Per student receipts for Lafayette, Monroe, and Tunica counties were 97¢, 38¢, and \$1.36. These compared with adjoining Grenada, Lowndes, and Coahoma counties' per student receipts of \$21.65, \$39.22, and \$76.36.

On a per acre basis, the sixteenth section counties averaged \$42.00 per acre in fiscal year 1983, while the Chickasaw Cession counties average remained at its constant 36¢ per acre. The per student implication is just as dramatic with the sixteenth section counties averaging \$75.34 per student, while the Chickasaw Cession districts only average 63¢ per student; Lee and Desoto counties, with larger student populations, average only 26¢ and 27¢ respectively.

The average county school district received \$172,856 in sixteenth section money, while the average municipal school district received \$101,068 in sixteenth section money. The entire \$62,191 Chickasaw interest payment went to 23 county schools for an average of \$2,704.

If a similar level of support were available to the Chickasaw Cession counties as were available to the *average* sixteenth section area counties, over \$7,000,000 in additional funding would be needed. Raising the per acre proceeds to the sixteenth section per acre average of \$42.00 would cost \$7,022,502. Employing a similar methodology to the per student shortfall would cost \$7,408,468.

CONCERNS

It has come to the attention of the State Auditor's office that the Chickasaw Cession school districts as a whole are financially unsound and, as a result, have resorted to doing any and all things necessary to provide quality public ed-

ucation in their districts, sometimes making *technical* violations of state accounting and budgeting laws. Examples of these technical violations include:

1. Utilizing restricted revenues for purposes not authorized by statute, but which benefit the school district.
2. Borrowing in anticipation of taxes and being unable to repay the entire amount by March 15 as set out by statute.
3. Utilizing current year tax monies to pay prior year claims, a practice not authorized by statute.

If these technical violations were ordered corrected, many of the Chickasaw Cession school districts would be unable to continue viable operations. It has put the State Auditor in a position of enforcing the law and closing public education in some school districts or allowing these technical violation to continue. Neither solution is acceptable.

RECOMMENDATIONS

Our offices strongly recommend that the Mississippi Legislature study the growing Chickasaw Cession school district financial problems and seek to provide them with some form of financial relief.

SCHOOL LAND INCOME

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FISCAL YEARS	CHOCTAW AREA		CHICKASAW AREA	
	Total	Per Acre	Total	Per Acre
1976-1977	\$ 4,923,381	\$ 7.44	\$62,191	\$.3683
1977-1978	8,701,298	13.14	62,191	.3683
1978-1979	10,846,845	16.38	62,191	.3683
1979-1980	9,853,598	14.88	62,191	.3683
1980-1981	8,180,400	12.36	62,191	.3683
1981-1982	30,935,874	46.72	62,191	.3683
1982-1983	27,811,603	42.01	62,191	.3683

SOURCE: Office of Secretary of State, 1984

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COMPARISON OF SCHOOL LAND INCOME SELECTED COUNTIES, FY 1981 and FY 1982

	FY 1981 - 1982		
	Total	Per Acre	Per Student
Monroe	\$ 2,516	\$.36	\$.38
Lowndes	684,945	70.01	66.53
Lafayette	4,421	.36	.97
Grenada	112,390	11.72	27.48
Tunica	2,851	.36	.97
Coahoma	484,250	41.57	71.55

NOTE: Per Student Data Developed By Applying Student Data Available From SDE.
SOURCE: Office of Secretary of State, 1984

**COMPARISON OF SCHOOL LAND INCOME
SELECTED COUNTIES, FY 1982 and FY 1983**

	FY 1982 - 1983		Per Student
	Total	Per Acre	
Monroe	\$ 2,516	\$.36	\$.38
Lowndes	133,561	13.65	12.63
Lafayette	4,421	.36	.97
Grenada	61,278	6.39	15.59
Tunica	2,851	.36	1.37
Coahoma	545,344	46.82	81.20

NOTE: Per Student Data Developed By Applying Student Data Available From SDE.
SOURCE: Office of Secretary of State, 1984

**COMPARISON OF SCHOOL LAND INCOME
SELECTED COUNTIES, FY 1982 and FY 1983
TWO-YEAR AVERAGE 1981 - 1982, 1982 - 1983**

	Two Year Average 1981 - 1982, 1982 - 1983		Per Student
	Total	Per Acre	
Monroe	\$ 2,516	\$.36	\$.38
Lowndes	409,253	41.83	39.22
Lafayette	4,421	.36	.97
Grenada	86,834	9.06	21.65
Tunica	2,851	.36	1.36
Coahoma	514,797	44.20	76.36

NOTE: Per Student Data Developed By Applying Student Data Available From SDE.
SOURCE: Office of Secretary of State, 1984

ESTIMATED 1984 CHICKASAW REVENUE SHORTFALL

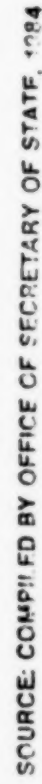
	CHICKASAW AREA	CHOCTAW AREA
1982-1983 Revenues Per Student	\$.63	\$75.34
1982-1983 Revenues Per Acre	.36	42.00
Shortage On Per Student Basis		- \$74.71
Shortage On Per Acre Basis		- \$41.64
PER STUDENT		
\$74.71 X 99,163* =		- \$7,408,468
PER ACRE		
\$41.64 X 168,648		- \$7,022,502
Acres** =		

*Estimate of Students Attending Public Schools In Chickasaw Session Area

**Lieu Land Acres In Chickasaw Session Area

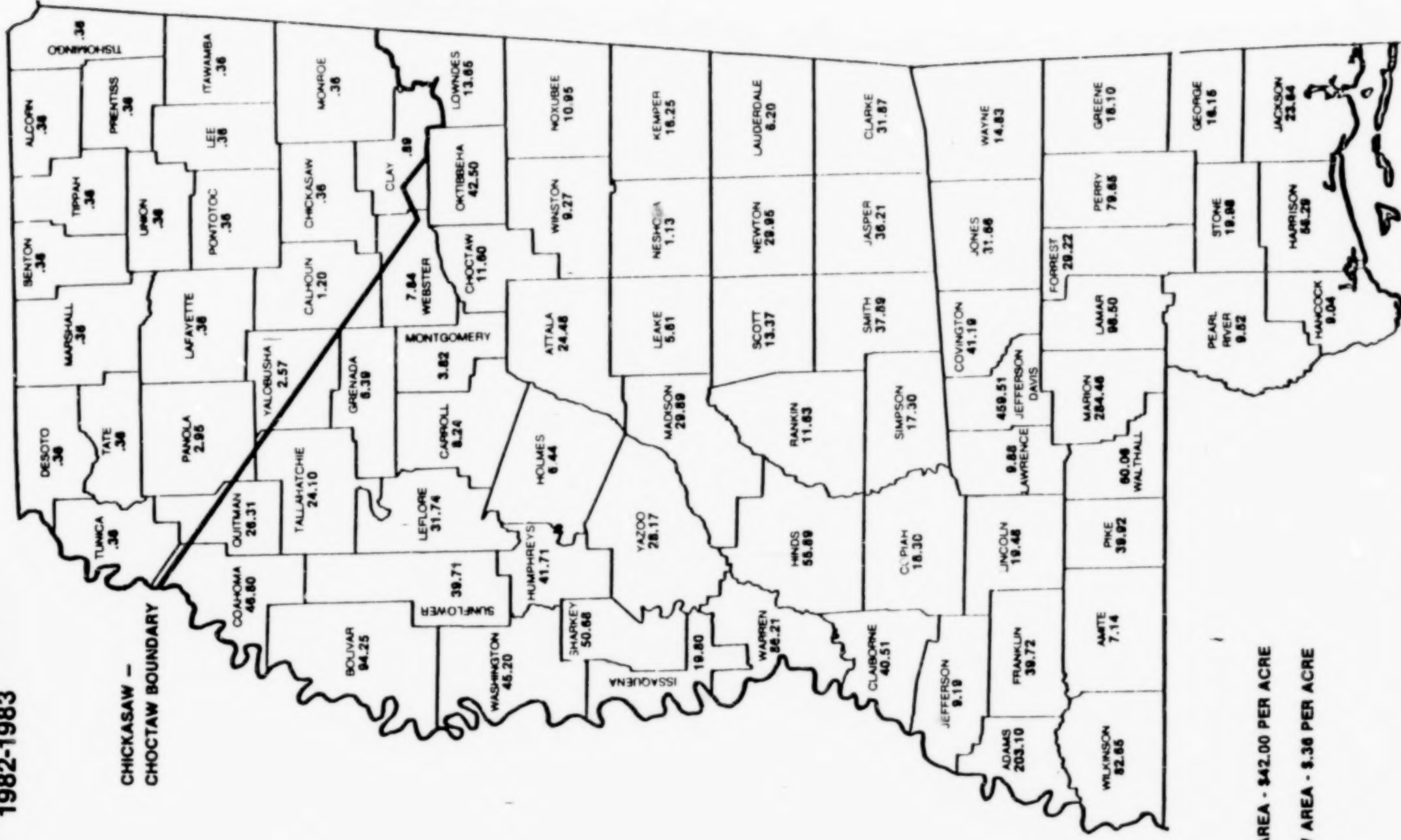
SOURCE: Office of Secretary of State, 1984

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REVENUE(\$ PER ACRE OF MISSISSIPPI SCHOOL LANDS 1982-1983

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CHOCTAW AREA - \$42.00 PER ACRE

CHICKASAW AREA - \$.36 PER ACRE

II: TREATIES OR ACTS OF CESSION

Georgia Cession

V The Territorial Papers Of The United States: The Territory of Mississippi, 1798-1817 at 142 (1937) (footnotes omitted).

Articles of Agreement and Cession entered into on the twenty fourth day of April One thousand eight hundred and two between the Commissioners appointed on the Part of the United States by virtue of an Act entitled "An Act for an amicable Settlement of Limits with the State of Georgia, and authorizing the Establishment of a Government in the Mississippi Territory," and of the Act supplemental to the last mentioned Act,, on the one Part; and the Commissioners appointed on the Part of the State of Georgia by virtue of an Act entitled "An Act to carry the twenty third Section of the first article of the Constitution into effect," and of the Act to amend the last mentioned Act, on the other Part.

ARTICLE 1st

The State of Georgia cedes to the United States all the Right, Title, and Claim, which the said State has to the Jurisdiction and Soil of the Lands situated within the Boundaries of the United States, South of the State of Tennessee and West of a Line beginning on the western Bank of the Chatahokie River, where the same crosses the boundary Line between the United States and Spain; running thence up the said River Chatahokie and along the western Bank thereof to the great Bend thereof next above the Place where a certain Creek or River called Uchee (being the first considerable Stream, on the western side, above the Cussetas and Coweta Towns) empties into the said Chatahokie River; thence in a direct Line to Nickajack on the Tennessee River; then crossing the said

last mentioned River, and thence running up the said Tennessee River and along the western Bank thereof to the southern boundary Line of the State of Tennessee: upon the following express conditions, and subject thereto, that is to say;

First, - That out of the first nett Proceeds of the Sales of the Lands thus ceded, . . . the United States shall pay, at their Treasury, One million two hundred and fifty thousand Dollars, to the State of Georgia . . . and that, for the better securing as prompt a Payment of the said sum as is practicable, a *LAND OFFICE*, for the disposition of the vacant Lands thus ceded to which the indian Title has been or may hereafter be extinguished, shall be opened. . .

Fifthly, - That the Territory thus ceded shall form a State, and be admitted as such into the Union, as soon as it shall contain sixty thousand free Inhabitants, or at an earlier period if Congress shall think it expedient, on the same conditions and Restrictions, with the same Privileges, and in the same manner as is provided in the Ordinance of Congress of the thirteenth day of July one thousand seven hundred and eighty seven for the Government of the Western Territory of the United States; which Ordinance shall, in all it's Parts, extend to the Territory contained in the present Act of Session, that article only excepted which forbids Slavery.

III: ACTS OF CONGRESS

1785 Northwest Ordinance - Land Sales XXVIII Journals Of The Continental Congress 298 (1933).

An Ordinance for ascertaining the Mode of disposing of
Lands in the Western Territory.

Be it ordained by the United States in Congress assembled, That the territory ceded by individual states to the United States, which has been purchased of the Indian inhabitants, shall be disposed of in the following manner:

The surveyors shall proceed to divide the said territory into townships of seven miles square, by lines running due north and south, and other crossing these at right angles. . .

The plats of the township respectively, shall be marked by subdivisions into sections of 1 mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 49. Always beginning the succeeding range of the sections with the number next to that which the preceding one concluded. . . And these sections shall be subdivided into lots of 320 acres.

The board of treasury shall transmit duplicates of the said original plats so drawn for, to the commissioners of the loan-offices of the several states, who, after giving notice of not less than two nor more than six months, by causing advertisements to be posted up at the courthouses, or other noted places in every county, and to be inserted

in one news-paper published in the states of their residence respectively, shall proceed to sell the townships or fractional parts at public vendue; . . .

There shall be reserved the central section of every township, for the maintenance of public schools within the said township. . . .

Ohio Enabling Act
2 Stat. 173 ch. XL (1802).

An Act to enable the people of the Eastern division of the territory northwest of the river Ohio to form a constitution and a state government, and for the admission of such state into the Union, on an equal footing with the original States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the eastern division of the territory northwest of the river Ohio, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper, and the said state, when formed, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

SEC.5. *And be it further enacted, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet at Chillicothe on the first Monday in November next; which convention, when met, shall first determine by a majority of the whole number elected, whether it be or be not expedient at that time to form a constitution and state government for the people, within the said territory, and if it be determined to be expedient, the convention shall be, and hereby are authorized to form a constitution and state government, or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall form for the people of the said state, a constitution and state government; provided the same shall be republican, and not repugnant to the ordinance of the thirteenth of July, one thousand seven*

hundred and eighty-seven, between the original states and the people and states of the territory northwest of the river Ohio.

SEC.7. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the eastern state of the said territory, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States.

First, That the section, number sixteen, in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.

Provided always, that the three foregoing Propositions herein offered, [including the sixteenth sections] are on the conditions that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by Congress, from and after the thirtieth day of June next, shall be and remain exempt from any tax laid by order or under authority of the state, whether for state, county, township or any other purpose whatever, for the term of five years from and after the day of sale.

APPROVED, April 30, 1802.

Amendment to the Ohio Enabling Act
2 Stat. 225 ch. XXI (1803).

An Act in addition to, and in modification of, the propositions contained in the act intituled "An act to enable the people of the Eastern division of the territory northwest of the river Ohio, to form a Constitution and state government, and for the admission of such state into the Union, on an equal footing with the original States, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following several tracts of land in the state of Ohio, be, and the same are hereby appropriated for the use of schools in that state, and shall, together with all the tracts of land heretofore appropriated for that purpose, be vested in the legislature of that state, in trust for the use aforesaid, and for no other use, intent or purpose whatever, that is to say:

Fourthly - One thirty-sixth part of all the lands of the United States lying in the state of Ohio, to which the Indian title has not been extinguished; which may hereafter be purchased of the Indian tribes by the United States, which thirty-sixth part shall consist of the section No. sixteen, in each township, if the said lands shall be surveyed in townships of six miles square, and shall, if the lands be surveyed in a different manner, be designated by lots.

APPROVED, March 3, 1803.

1803 Land Sales Act for Mississippi
2 Stat. 229 ch. XXVII (1803).

An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee.(a)

Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, That any person or persons, . . . who were resident in the Mississippi territory on the twenty-seventh day of October, in the year one thousand seven hundred and ninety-five, and who had prior to that day obtained, either from the British government of West Florida or from the Spanish government, any warrant or order of survey for lands lying within the said territory, to which the Indian title had been extinguished, . . . shall be confirmed in their claims to such lands. . . .

SEC.6. *And be it further enacted, That the register of the land-office in Adams county, and two other persons who shall be appointed by the President of the United States alone, shall . . . be commissioners, for the purpose of ascertaining the rights of persons . . .; and, when it shall appear to them that the claimant is entitled to a tract of land . . . in virtue of a British or Spanish grant legally and fully executed, they shall give a certificate thereof. . . .*

SEC.11. *And be it further enacted, That the lands for which certificates shall have been granted by the commissioners in pursuance of the provisions of this act, shall, as soon as may be, be surveyed under the direction of the surveyor of the lands of the United States above mentioned, in conformity to the true tenor and intent of such certificates; and the said surveyor shall also cause all the other lands of the United States, in the Mississippi territory, to which the Indian title has been extinguished, to*

be surveyed as far as practicable, into townships, and subdivided into half sections, in the manner provided for the surveying of the lands of the United States, situate northwest of the river Ohio, and above the mouth of the Kentucky river, and shall transmit to the registers of the land-offices respectively, general and particular plots of all the lands surveyed as aforesaid, and shall also forward copies of the said plots to the Secretary of the Treasury; . . .

SEC.12. *And be it further enacted, That all the lands aforesaid, not otherwise disposed of, or excepted by virtue of the preceding sections of this act, shall, with the exception of the section number sixteen, which shall be reserved in each township for the support of schools within the same, . . . be offered for sale to the highest bidder, under the direction of the governor of the Mississippi territory, of the surveyor of the lands of the United States, above mentioned, and of the register of the land-office at the places respectively, where the land-offices are kept, and on such day or days as shall, by a public proclamation of the President of the United States, designated for that purpose. The sales shall remain open at each place for three weeks and no longer; and all lands, other than the section number sixteen, remaining unsold at the closing of the public sales, may be disposed of at private sale by the registers of the respective land-offices in the same manner, under the same regulations, for the same price, and on the same terms and conditions as is provided by law, for the sale of the lands of the United States, north of the river Ohio, by an act, intituled "An act to amend the act intituled, An act providing for the sale of the lands of the United States in the territory northwest of the Ohio, and above the mouth of Kentucky river." . . .*

APPROVED, March 3, 1803.

Mississippi Enabling Act
3 Stat. 348 ch. XXIII (1817).

Chap. XXIII.—*An Act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the union, on an equal footing with the original states.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the western part of the Mississippi territory be, and they hereby are, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted to the union upon the same footing with the original states, in all respects whatever.

SEC.4. *And be it further enacted,* That the members of the convention, thus duly elected, be, and they hereby are authorized to meet at the town of Washington, on the first Monday in July next: which convention, when met, shall first determine, by a majority of the whole number elected; whether it be or be not expedient, at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: *Provided,* That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory north-west of the river Ohio, so far as the same has been extended to the said territory by the articles of agreement between the United States and the state of Georgia, or of the constitution of the United States: *And provided also,* That the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people

inhabiting the said territory do agree and declare that they for ever disclaim all right or title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by Congress, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof, and that the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States, and that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state, as to other citizens of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said state.

SEC.5. *And be it further enacted,* That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals; of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of Congress: *Provided,* That the application of such proceeds shall not be made until after payment is completed of the one million two hundred and fifty thousand dollars due to the state of Georgia, in consideration of the cession to the United States, nor until the payment of all the stock which has been or shall be created by the act, entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi territory," shall be completed: *And provided also,* That the

said five per cent. shall not be calculated on any part of such proceeds as shall be applied to the payment of the one million two hundred and fifty thousand dollars due to the state of Georgia, in consideration of the cession to the United States, or in payment of the stock which has or shall be created by the act, entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi territory."

APPROVED, March 1, 1817.

1817 Land Sales Act for Mississippi
3 Stat. 375 ch. LXII (1817).

An Act to authorize the appointment of a surveyor for the lands in the northern part of the Mississippi territory, and the sale of certain lands therein described.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That a surveyor of the lands of the United States in the Mississippi territory, lying north of an east and west line, to be drawn from the river Mississippi, through fort Williams, to the western boundary line of the state of Georgia, shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors as his deputies, and to cause the lands above mentioned, which have not already been surveyed, and to which the Indian title has been extinguished, to be surveyed and divided in the manner provided by law for the surveying of the other public lands of the United States in the Mississippi territory, to do and perform all such acts in relation to the said lands, to transmit plats of survey in the manner, and to fix the compensation of the deputy surveyor, chain-carriers, and axe-men, under the same restrictions and limitations of expense in surveying, as is by law directed and provided for the regulation of the powers and duties of the surveyor of the lands south of the state of Tennessee, in relation to the other public lands in the Mississippi territory. And the said surveyor, appointed in pursuance of this act, shall be entitled to receive, for his services, one thousand five hundred dollars, as an annual compensation.

SEC.2. And be it further enacted, That all the lands of the United States in the Mississippi territory, to which the Indian title has been extinguished, lying north of the aforesaid east and west line, and which has not heretofore been offered for sale, shall be attached to, and made a part of, the land district of Madison, in the said territory.

SEC.3. And be it further enacted, That all the lands, by this act attached to the district of Madison, after having

been surveyed according to law, shall, with the exception of the section No. 16, in each township, which shall be reserved for the support of schools therein, and with the further exception of such sections, not exceeding ten in number, as the President shall designate, for the purpose of laying out and establishing towns thereon, be offered for sale to the highest bidder, under the direction of the register of the land office, and the receiver of public moneys, at the place where the land office is kept, and on such day, or days, as shall, by proclamation of the President of the United States, be designated for that purpose; the sales shall remain open two weeks, and no longer. . . .

APPROVED, March 3, 1817.

Chickasaw Lieu Lands Act
5 Stat. 116 ch. CCCLV (1836).

An Act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States in regard to the five per cent. fund, and the school reservations.

SEC.2. *And be it further enacted*, That there shall be reserved from sale, in the State of Mississippi, a quantity of land, equal to one-thirty-sixth part of the lands ceded by said Chickasaws as aforesaid, within said State of Mississippi, which land shall be selected under the direction of the Secretary of the Treasury, in sections, or half sections, or quarter sections, out of any public land remaining unsold, that shall have been offered at public sale within either of the land districts in said State of Mississippi, contiguous to said lands within said State, so ceded by the Chickasaws as aforesaid; which lands, when so selected as aforesaid, the same shall vest in the State of Mississippi, for the use of schools within said territory in said State, so ceded as aforesaid by the Chickasaws; and said lands, thus selected, shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as the said State now holds the lands heretofore reserved for the use of schools in said State.

APPROVED, July 4, 1836.

Amendment to Chickasaw Lieu Lands Act
5 Stat. 490 ch. XL (1842).

An Act to amend an act entitled "An act to carry into effect, in the State of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the second section of the act entitled "An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations." as requires the land therein designated as reserved to the State of Mississippi for the use of schools to be selected, under the direction of the Secretary of the Treasury, "out of any public lands, remaining unsold, that shall have been offered at public sale within either of the land districts in said State of Mississippi, contiguous to said lands, within said State," ceded by the Chickasaws, be so amended that the said lands may be selected, under the direction of the Governor of said State of Mississippi, out of any public lands remaining unsold within either of the land districts in said State of Mississippi, contiguous to the lands in said State, ceded by the Chickasaw Indians.

APPROVED, June 13, 1842.

Authorization of Sale of Lieu Lands
10 Stat. 6 ch. XXXV (1852).

Chap.XXXV. - An Act to authorize the Legislature of the State of Mississippi to sell the Lands heretofore appropriated for the Use of Schools in that State, and to ratify and approve the Sales already made.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislature of the State of Mississippi shall be, and is hereby authorized to sell and convey in fee-simple, or lease, for a term of years, as the said legislature may deem best, all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said State, and to invest the money arising from said sales, as said legislature may direct, for the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use, or purpose whatsoever: *Provided*, Said lands or any part thereof, shall, in no case be sold or leased without the consent of the inhabitants of such township or district to be obtained in such manner as the legislature of said State may by law direct: *And provided further*, That in all cases, the money arising from the sales of lands within a particular township and district, shall be appropriated to the use of schools within that township and district.*

SEC.2. And be it further enacted, That sales heretofore made by the authority of the Legislature of the State of Mississippi of lands reserved and appropriated as aforesaid, are hereby ratified and approved in the same manner and to the same extent, as if this act had been in force at the time of said sales.

APPROVED, May 19, 1852.

IV: MISSISSIPPI CONSTITUTIONAL PROVISIONS

Mississippi Constitution, art. VI, § 20 (1817).

That the general assembly shall take measures to preserve from unnecessary waste or damage such lands as are or may hereafter be granted by the United States for the use of schools, within each township in this State, and apply the funds which may be raised from such lands, by rent or lease, in strict conformity to the object of such grant; but no lands granted for the use of such township schools shall ever be sold by any authority in this State.

Mississippi Constitution, art. IV, § 104 (1890).

Statutes of limitations in civil causes shall not run against the state, or any subdivision or municipal corporation thereof.

Mississippi Constitution, art. VIII, § 212 (1890).

The rate of interest on the fund known as the Chickasaw school fund, and other trust funds for educational purposes, for which the State is responsible, shall be fixed and remain as long as said funds are held by the State, at six per centum per annum, from and after the close of the fiscal year A. D., 1891, and the distribution of said interest shall be made semi-annually on the first of May and November of each year.

V: ACTS OF MISSISSIPPI LEGISLATURE: CODE PROVISIONS

Miss. Code Ann. § 11-46-5 (4) (Supp.1985).

Waiver of immunity; course and scope of employment; presumptions.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

Miss. Code Ann. § 15-1-7 (1972).

Limitations applicable to actions to recover land.

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

Miss. Code Ann. § 15-1-9 (1972).

Limitations applicable to suits in equity to recover land.

A person claiming land in equity may not bring suit to recover the same except within the period during which, by virtue of section 15-1-7, he might have made an entry or brought an action to recover the same, if he had been entitled at law to such an estate, interest, or right in or to the same as he shall claim therein in equity. However, in every case of a concealed fraud, the right of any person to bring suit in equity for the recovery of land, of which he or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which the fraud shall, or, with reasonable diligence might, have been first known or discovered.

Miss. Code Ann. § 15-1-39 (1972).

Limitations applicable to actions involving certain trusts.

Bills for relief, in case of the existence of a trust not cognizable by the courts of common law and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue and not after, saving, however, to all persons under disability of infancy or unsoundness of mind, the like period of time after such disability shall be removed. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

Miss. Code Ann. § 15-1-53 (1972).

Effect of running of statute of limitations against executor, administrator, guardian, or other trustee, as against beneficiary.

When the legal right to property or a right in action is in an executor, administrator, guardian, or other trustee, the time during which any statute of limitations runs against such trustee shall be computed against the person beneficially interested in such property or right in action, although such person may be under disability and within the saving of any statute of limitations; and may be availed of in any suit or actions by such person.

Miss. Code Ann. § 29-3-1 (Supp.1985).

Board of education to have control - management of lands and funds as trust property - disapproval by board of supervisors of rental value of lands - definitions.

(1) Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. The board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made. It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property. Accordingly, the board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.

Miss. Code Ann. § 29-3-17 (Supp.1985).**Lieu lands commission.**

A commission is hereby established to be known as the lieu land commission, hereinafter referred to as the commission, and such commission shall consist of the attorney general, who shall be ex officio chairman, the secretary of state and the state land commissioner, who shall be ex officio secretary. Said lieu land commission shall have authority to sell all lands granted in lieu of sixteenth section land and located out of the county owning such land situated in the State of Mississippi. From and after July 1, 1981, said lieu land commission shall proceed to sell all such lands granted in lieu of sixteenth section land and located out of the county owning such land situated in the State of Mississippi.

Miss. Code Ann. § 29-3-57 (Supp.1985)

Superintendent of education to docket leases and collect rentals.

The superintendent of education shall keep a current docket as to the expiration date of all leases on sixteenth section lands; likewise, he shall keep a correct current docket upon the existing leases or any extensions thereof as to the amounts and time of payment of rentals provided for by such lease. It shall be the duty of the superintendent of education to collect promptly all rentals due and all principal and interest due upon loans and investments of sixteenth section funds. Upon a sixty (60) day default in payment of any rentals according to the terms of such lease, the lease shall be declared terminated unless the board of education finds extenuating circumstances were present, and the board shall inaugurate the proper legal proceedings to terminate such lease. The superintendent of education, with the approval of the board of education, may employ an attorney or other person to aid in collecting any such funds when in his opinion the same is necessary,

and may pay reasonable compensation therefor out of funds collected, not to exceed in any case twenty-five per cent (25%) of the amount actually collected. It shall be the duty of the superintendent of education to supervise generally the administration of all sixteenth section lands within his jurisdiction. In all cases where leases of sixteenth section lands are entered into, it shall be the duty of the superintendent of education to take the notes of the lessees for the rents provided by said lease and turn them over to the county depository and attend to their collection. In the case of the leasing of agricultural lands, the school district shall have the same rights and remedies for the security and collection of such rent as are given by law to agricultural landlords.

Miss. Code Ann. § 29-3-59 (Supp.1985).

Proceeds of leases.

All rentals, or other revenue payable under any leases executed pursuant to this chapter shall be paid to and collected by the superintendent of education and shall be credited to the township school fund and used and expended in the same manner and subject to the same restrictions as provided by law in the case of other money belonging to such funds. Any superintendent of education receiving any such revenue shall make annual report thereof to the state superintendent of education.

Miss. Code Ann. § 29-3-109 (Supp.1985).

Crediting of funds derived from lands.

All expendable funds derived from sixteenth section or lieu lands shall be credited to the school district of the township in which such sixteenth section lands may be located, or to which any sixteenth section lieu lands may belong. Such funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise may be provided by law.

The board of education shall require additional securities from the county depository when necessary to protect such funds and, in the event of their failure so to do, they shall be liable therefor upon their official bond.

Miss. Code Ann. § 29-3-111 (Supp.1985).

Expenditure of moneys derived from lands.

All moneys heretofore or hereafter derived from the leasing of said lands for oil, gas and mineral purposes, including any bonus or delay rental payable under such leases, and all moneys derived from the annual payment of rents from the leasing of said lands for agricultural, residential, commercial, industrial, grazing or other purposes, or derived as interest upon loans or investments of principal funds, and all moneys heretofore or hereafter derived from the sale of timber, may be expended for any of the purposes authorized by law. In cases where said moneys have been transferred to the principal fund and it is determined to expend same for any of the purposes authorized by law, such moneys shall be transferred to the proper fund for expenditure upon order of the board of education.

Miss. Code Ann. § 29-3-113.

Investment and lending of funds.

The principal fund shall be a permanent fund which shall consist of funds heretofore or hereafter derived from certain uses or for certain resources of school trust lands which shall be invested and, except as otherwise provided in this section, only the interest and income derived from such funds shall be expendable by the school district.

The principal fund shall consist of:

- (a) Funds received for easements and rights-of-way pursuant to section 29-3-91;
- (b) Funds received for sales of lieu land pursuant to sections 29-3-15 through 29-3-25;
- (c) Funds received from any permanent damage to the school trust land;
- (d) Funds received from the sale of nonrenewable resources but not limited to the sale of sand, gravel, dirt, clays and royalties received from the sale of mineral ores, coal, oil and gas.
- (e) Funds received from the sale of buildings pursuant to section 29-3-77.
- (f) Funds received from the sale of timber.

It shall be the duty of the board of education to keep the principal fund invested in any direct obligation issued by or guaranteed in full as to principal and interest by the United States of America or in certificates of deposit issued by a qualified depository of the State of Mississippi as approved by the state depository commission. The certificates of deposit may bear interest at any rate per annum which may be mutually agreed upon but in no case shall said rate be less than that paid on passbook savings.

The board of education is likewise authorized to invest said funds in interest bearing deposits or other obligations

of financial institutions in which, and to the same extent as, the state depository commission is authorized to invest excess state funds under and by virtue of the provisions of section 27-105-33, as the same now is or may hereafter be amended, except that one hundred percent (100%) of said funds are hereby authorized to be so invested. For the purposes of investment, the principal fund of each township may be combined into one (1) or more district accounts; however, the docket book of the county superintendent shall at all times reflect the proper source of such funds. Provided that funds received from the sale of timber shall be placed in a separate principal fund account, and may be expended for any of the purposes authorized by law.

Miss. Code Ann. § 29-3-115 (Supp.1985).

Use of expendable funds.

The expendable funds derived from sixteenth section or lieu lands may be expended for the building and repair of schoolhouses, teachers' homes, and other school facilities, the purchase of furniture, school vehicles and equipment for same, the payment of teachers' salaries, and for all other purposes in operating and maintaining the schools of the district to which such funds belong for which other available school funds may be expended. Such funds may also be expended for clearing, draining, reforestation and otherwise improving any sixteenth section lands of township to which any such available funds may belong. Such funds may also be expended for the purpose of paying any drainage district taxes, costs, expenses, and assessments for which sixteenth section may be liable, and in such case the same shall be paid by the board of education out of any funds which would otherwise be paid over to the school district entitled thereto under the provisions of sections 29-3-115 through 29-3-123. Such funds may also be expended to pay all reasonable and necessary attorneys' fees incurred to clear the title on any sixteenth section lieu lands located outside the county.

VI: ACTS OF MISSISSIPPI LEGISLATURE:
STATUTES AT LARGE

1844 Miss. Laws 238 ch. LXVIII.

AN ACT to secure to the Chickasaw counties the benefit of the lands given to the State in lieu of the Sixteenth Section, in the Chickasaw Nation.

WHEREAS, on the fourth day of July, in the year one thousand eight hundred and thirty-six, the Congress of the United States passed an act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States, in regard to the five per cent fund and the school reservations, under which act the Secretary of the Treasury caused certain lands to be selected for the use of schools in the Chickasaw cession: And whereas, on the thirteenth day of June, Anno Domini one thousand eight hundred and forty-two, an amendment to said act was passed by Congress, vesting in the Governor of the State of Mississippi the power of locating the said lands for the use of schools, in the Chickasaw Nation, in lieu of the sixteenth section, out of any public land remaining unsold within either of the land districts in said State of Mississippi, contiguous to the Chickasaw Indians—

SEC.1. *Be it enacted by the Legislature of the State of Mississippi*, That all the selections of lands, made by the Secretary of the Treasury, under the act of Congress, passed July fourth, one thousand eight hundred and thirty-six, be, and the same are hereby relinquished; and all selections made, or hereafter to be made by the Governor of the State of Mississippi, under the act of June thirteenth, Anno Domini one thousand eight hundred and forty-two, be, and the same are hereby received by the State of Mississippi, for the purpose specified in said act of June thirteenth, one thousand eight hundred and forty-two.

SEC.2. *Be it further enacted*, That it shall be the duty of the Governor to have filed in the office of the register of the land office, in the district in which the lands have been located, under the act of thirteenth of June, one thousand eight hundred and forty-two, a list of all locations, reported by the commissioners appointed to select lands under said act; and that hereafter, it shall be the duty of the commissioners, at least once in three months, to file, in the proper land office, a list of the locations made by them, until the full amount of lands shall be selected.

SEC.3. *Be it further enacted*, That each of the commissioners hereafter, shall be allowed to employ one assistant, at a price not to exceed thirty dollars per month; and the commissioner shall, as far as convenient, locate from separate, instead of joint examination, so as to complete the locations as soon as possible.

SEC.4. *And be it further enacted*, That this act shall take effect and be in force from and after its passage.

APPROVED February 13, 1844.

1848 Miss. Laws 62 ch. III.

AN ACT to provide for the leasing of the Chickasaw School Lands.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That for the disposal of lands ceded by act of Congress for the use of schools in the Chickasaw cession, in lieu of the sixteenth sections of said cession, approved September 4, 1841, there shall be a land office established in the city of Jackson, under the management and control of the Secretary of State, whose duty it shall be, so soon as may be practicable after the passage of this act, to provide the said land office with maps or plats of such lands as have been selected by the commissioners appointed by the Governor of this State for the purpose aforesaid, copies of which maps he shall furnish to the Auditor of public accounts, and keep the originals in said land office; and shall exhibit the same and furnish copies to any person or persons who may apply to him for the same, from whom the said Secretary of State may demand and receive a fee of fifty cents for each copy of a transcript or smaller quantity of land which he may furnish.

SEC.2. *Be it further enacted*, That it shall be the duty of the said Secretary of State, to offer the said lands at public auction to the highest bidder for lease for the term of ninety-nine years, and renewable to the lessee, his heirs or assigns forever, in the city of Jackson, in front of the State capitol, on the first Monday of December, 1848, in tracts of quarter sections, as the same may have been surveyed and sub-divided under the authority of the United States: *Provided*, he shall give six months previous notice of the time and place and terms of such sale by proclamation in three public newspapers printed in this State, and in one of the public newspapers printed in the city of Nashville, and in the Washington Union.

SEC.3. *Be it further enacted*, That the said sale of leases shall continue from day to day until the whole of said

lands shall be offered for sale; and all of said lands for lease remaining unsold at the close of said public auction, may be disposed of at private sale by said Secretary of State in the manner hereinafter prescribed: *Provided*, that no leases of lands shall be disposed of by virtue of this act either at public or private sale, for a less sum than six dollars per acre be paid in gold and silver.

SEC.4. *Be it further enacted*, That all payments for such lands shall be made to the Treasurer of this State upon the receipt warrant of the Auditor of public accounts, which said warrant the Auditor shall issue to such person or persons as shall deliver to him the certificate of the Secretary of State, certifying such person or persons have been the highest bidder at said public auction, or applicant at private sale of leases, as the case may be, and specifying the amount bid or due for the quarter section or fractional quarter section, as the case may be applied for; and upon payment being made to the Treasurer of the purchase money of said lease of said tract of land, it shall be his duty to give the purchaser or purchasers a receipt specifying the amount paid and the tract of land leased, and to record the same in a book to be kept by him for that purpose; upon which receipt, or a copy of the record thereof being presented to the Governor of this State, it shall be his duty to issue a patent of said lease to the purchaser or purchasers, which patent shall be signed by the Governor and countersigned by the Secretary of State, and the great seal of the State shall be annexed: *Provided*, the person or persons applying for the same shall first pay to the Secretary of State the sum of one dollar for every such patent.

SEC.5. *Be it further enacted*, That it shall be the duty of the Auditor of public accounts, to open an account between the State of Mississippi and the fund realised from the lease of said lands in a book to be kept by him for that purpose, in which he shall charge the State with the several amounts received on account of said lands, the whole amount of which, after deducting the expenses of said sale as well as expenses incurred by the State for

locating those lands, shall be a charge upon the State of Mississippi, to be held in trust by said State for the use of schools in the Chickasaw cession, and to be applied to that purpose as hereafter to be provided by law.

SEC.6. *Be it further enacted*, That after the said public lease of said land shall have closed, if any two or more persons shall apply to purchase the lease of the same quarter section or other tract of land on the same day and at one and the same time, it shall be the duty of the Secretary of State to reoffer the same to the highest bidder over six dollars per acre, among said applicants, and to give a certificate to said highest bidder, as in cases of public sale as hereinbefore provided.

SEC.7. *Be it further enacted*, That if any purchaser or purchasers at public sale shall fail to pay the purchase money before the land office is open the next day after said purchase, the said leases of land bid off by him or them shall be again offered at public auction by the Secretary of State, and the person or persons shall not be entitled to bid thereafter at said sale.

SEC.8. *Be it further enacted*, That the Auditor of public accounts shall receive twenty-five cents for each receipt warrant he shall issue; and the Secretary of State and Treasurer shall each receive twenty-five cents for each certificate or purchase they shall issue under the provisions of this act, from the person or persons in whose favor they are issued; and it shall be the duty of the Auditor of public accounts, upon the application of the Secretary of State, to issue his warrant upon the treasury of this State for an amount sufficient to defray the expenses incurred in carrying into effect the provisions of this act, which amount shall be charged by him to the Chickasaw school fund, and shall be paid out of any money in the treasury not otherwise appropriated.

SEC.9. *Be it further enacted*, That the advertisement authorized by this act, shall only define the county, township, and range in which said lands are situated, with the number of acres in each county, with a notice, that a list of each tract may be had by an application to the Secretary

of State, and that said list is posted up at the court-house of each county where said lands are situated, which list the Secretary of State shall cause to be made out and posted as above.

SEC.10. *Be it further enacted*, That said land office shall be open at 10 o'clock A.M., and closed at 3 o'clock P.M. of each and every day, Sundays excepted.

SEC.11. *Be it further enacted*, That L. L. Bridges, Jacob Magee, Daniel Connell, and Joshua L. Champion of Coahoma county, be authorised to enter, at the price of two dollars and fifty cents per acre, the several pre-emptions heretofore entered by them under the laws of the general government, viz: L. L. Bridges, the north-west quarter section 19, township 28, and range two west; Jacob Magee, the north-west quarter of section 23, township 30, in range three west; Daniel Connell, lots 9, 10, 15, and 16, section 23, township 30, range three; and J. L. Champion, the east half of the north-west quarter of section 26, township 29, range three west; which entries shall be made and governed by the same rules and regulations, and may enter the same at any time before the day appointed for the sale of the lands, as other entries.

SEC.12. *And be it further enacted*, That this act take effect and be in force from and after its passage.

APPROVED February 23, 1848.

1854 Miss. Laws 348 ch. CCXVII.

AN ACT supplemental to an act entitled an act to provide for the Leasing of the Chickasaw School Lands, approved February 23, 1848.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That so much of the above recited act as provides that the Chickasaw school lands shall be leased for the term of ninety-nine years, be and the same is hereby repealed, and that hereafter it shall be the duty of the Secretary of State, upon the application of any person or persons for the purchase of any such lands as are remaining unsold, to issue to such applicant, a certificate of entry, (instead of lease,) and upon payment being made by such applicant to the treasurer, of the purchase money, as is now provided, it shall be the duty of said treasurer, to give to the said purchaser or purchasers, a certificate therefor, and upon the production of said certificate of payment, or a copy of the record, as is now prescribed, to the Governor of this State, it shall be his duty to issue a patent, in fee simple, to the purchaser or purchasers, which patent shall be signed by the Governor, and counter-signed by the Secretary of State, and the great seal of the State shall be annexed.

SEC.2. *Be it further enacted*, That all lands heretofore leased under the provisions of the above recited act, shall be renewable to the lessee, his heirs or assigns, forever, without the payment on the part of said lessee, his heirs or assigns, or any other sum or sums than may be necessary as charges by the proper officers of this State, in compensation for services in renewing said lease, as is provided in the second section of said act.

SEC.3. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

APPROVED March 2, 1854.

1856 Miss. Laws 141 ch. LVI.

AN ACT to provide for the payment of interest on the Chickasaw School Fund, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That hereafter it shall be the duty of the auditor of public accounts, on the first day of May and November of each year, to credit the Chickasaw school funds account which he was required to open between the State of Mississippi and the said fund, by virtue of the fifth section of an act of the legislature of the State, passed February 23, 1848, entitled "an act to provide for the lease of the Chickasaw school lands," with interest at the rate of eight per cent. per annum, to-wit: on the first day of May, with interest for six months, on all moneys due said fund on the first day of November preceding; and on the first day of November, with interest for six months on all moneys due said fund on the first day of May preceding, which said interest shall be drawn from the treasurer in the manner hereinafter provided; but the principal sum of said fund, now in the treasurer, or which shall be hereafter received from the sale of said lands constituting said fund, shall become a charge on the State of Mississippi, and shall remain and be subject to general appropriation, by law, from the treasurer, or otherwise to be used by the State, in the same manner as the moneys received into the State from the ordinary sources of revenue.

SEC.2. *Be it further enacted*, That the county treasurer of the several counties entitled to a distributive share of the interest arising from the said fund, be, and they are hereby authorized, on the first day of May and November, of each and every year, to receive the share of said interest to which their counties respectively, are entitled, upon complying with the conditions hereinafter set forth.

SEC.3. *Be it further enacted*, That the secretary of State is hereby required to make out and furnish to the auditor of public accounts, a calculation, based on the area of territory in the Chickasaw purchase, of the proportionate amount of interest due to each of said counties; and it is hereby made the duty of said auditor to issue his warrant on the State treasurer for the said proportionate amount, upon application to him by said county treasurer, in person, or attorney in fact, accompanied with satisfactory proof that said county treasurer has fully complied with the requirements of this act. And it shall be lawful for any sheriff in this State to cash orders of the county treasurer of his county, for the amount of the interest due his county; and the auditor of public accounts is hereby authorized to receive said order from such sheriff, in his settlement of State taxes.

SEC.4. *Be it further enacted*, That before said county treasurer shall be entitled to receive said interest, or any portion thereof, they shall severally, annually, execute a bond, with three good securities, each of whom shall be worth the entire penalty of said bond, to be approved by the judge of the probate court of the proper county, in the penal sum of at least twice the amount to which said county is annually entitled, conditioned that said treasurer will faithfully perform the duties required of him by law in relation to said moneys, and that he will account for the said moneys that he, or his attorney in fact, may draw from the treasury.

SEC.5. *Be it further enacted*, That should any county treasurer fail to execute said bond for twenty days after being required so to do by the school commissioners of his county, or should said treasurer, from intemperance, incapacity or other cause, be unable, in the opinion of said school commissioners, to faithfully perform the duties by this act required of him, then the said school commissioners, after ten days public notice of the time and place of meeting for said purpose, shall proceed to elect some suitable person to discharge the duties of treasurer of said fund; and the person so elected, after giving the bond

required of the county treasurer in this act, shall be fully invested with all the power, and receive the same compensation, and be liable to all the penalties, as if he were county treasurer of said county.

SEC.6. *Be it further enacted*, That any treasurer or receiver of said moneys, who shall embezzle or fail to pay over any portion of the same, when lawfully required, shall be liable to the same prosecution, and on conviction, subjected to the same punishment that the sheriff of the various counties in this State now are or hereafter may be, for the embezzlement of public moneys.

SEC.7. *Be it further enacted*, That the board of police of each county shall fix the compensation of said treasurer, annually, for the service required by this act.

SEC.8. *Be it further enacted*, That said treasurer shall keep an accurate entry of everything pertaining to said interest fund, in a well-bound book; which book and all papers belonging to said fund, shall, at all times, be subject to the inspection of the school commissioners, and that a detailed statement of the situation of the whole of said interest fund shall be submitted to said commissioners every six months, and to the board of police annually.

SEC.9. *Be it further enacted*, That in those counties of the Chickasaw cession, where no school commissioners have been appointed, that the boards of police of said counties are hereby required to appoint five school commissioners, one for each police district; who shall hold their office for two years, and shall exercise all the powers, and be entitled to the same pay, as are the commissioners appointed under the act of the 16th February, 1850, entitled "an act to amend the several laws of this State in relation to the common schools, so far as it relates to Chickasaw county."

SEC.10. *Be it further enacted*, That the interest moneys in each county shall be held subject to the order of the board of school commissioners of such county, which is hereby authorized to expend the same in accordance to the existing laws, or laws that may be hereafter passed,

SEC.12. *Be it further enacted*, That all said scrips not located in five years shall be null and void, and upon the return thereof to the State, certificates of stock to the amount of the sum shall be returned to the company returning it but neither of said companies shall enter or hold the said land entered, but may sell said scrip.

SEC.13. *Be it further enacted*, That said companies shall sell, whenever offered, for 1 75-100 dollars per acre in cash for said scrip.

SEC.14. *Be it further enacted*, That it is hereby made the duty of the auditor of public accounts to loan an amount equal to all moneys now in the treasury of this State arising from the sale or lease of the Chickasaw school lands, or which may hereafter come into the treasury from the sale or lease of said lands, to the extent of the sum of four hundred thousand dollars to the following railroad companies, in equal amount to each of said roads, viz: the Mississippi & Tennessee Railroad Company, the Mississippi Central Railroad Company, the Mobile & Ohio Railroad Company, and the New Orleans, Jackson & Great Northern Railroad Company, and shall issue his warrant in favor of the president or treasurer of each of said companies in equal amounts for the amount loaned each company respectively, directed to the treasurer of this State, who shall pay the same out of any money in the treasury not otherwise appropriated.

SEC.15. *Be it further enacted*, That it shall be the duty of the auditor of public accounts to loan said money for the space of seven years from the date of issuing his warrant, as above provided, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first day of April and October.

SEC.16. *Be it further enacted*, That said auditor shall take from each of said companies to which a loan is made as above provided, its obligation to repay, at the expiration of seven years, the amount so borrowed, and to pay four per cent. interest thereon at the periods mentioned in the last preceding section of this act; and shall take from each

____ Railroad Company
No. ____ Signed, _____,
Auditor of Public Accounts."

Which said scrip may be endorsed by the treasurer of the company holding the same, and shall be received as money; each acre in said scrip being valued at one dollar and seventy-five cents, and shall entitle the holder thereof to enter the amount of land therein mentioned, in the same manner as could now be entered with money; the holder paying the same fees as are now required by law; which said scrip shall, as to 12,800 acres, be for sections of land; for 12,800 for half sections, and for _____ acres in quarter sections; and the railroad company receiving the same, shall pay said auditor one dollar for each scrip received by it, and shall issue to the State its certificate of capital stock for each acre of land - valuing the same at one dollar and seventy-five cents per acre; which stock shall be held by the State for the internal improvement fund, to be disposed of as now required by law.

company respectively, as collateral security, an amount of its first mortgage bonds, or first mortgage income bonds, secured on all the property and effects of said company, equal in amount to the sum thus loaned, and likewise an amount of the scrip or certificate of the capital stock of said company in four times the amount thus loaned.

SEC.17. *Be it further enacted*, That said certificates of stock so required to be taken as collateral security, shall be issued to the State of Mississippi, to be held by it as such security, which certificates, together with said bonds and obligation, which obligation shall be payable to the State, shall be deposited in the treasury of the State.

SEC.18. *Be it further enacted*, That it shall be the duty of each of said companies to pay the principal and interest according to the requirement of its obligation to pay the same; and should either of said companies fail to pay said principal and interest, or either, when due, and continue so in default for the space of sixty days, then the whole debt upon the first default as aforesaid shall be at once due, and unless paid by the company so in default, the mortgage lien upon the property and effects of such company may be enforced, and the securities deposited by it as aforesaid, shall, when received by the Governor or the legislature, be sold by the said treasurer of the State, at public auction, at the capital of the State, to the highest bidder for cash, and the proceeds of said sale shall be credited in the obligation of such company, and the residue, if any, paid to the company whose said bonds and stock are thus sold; *Provided, however*, That said treasurer shall give sixty days notice of the time, place and terms of said sale, by advertising the same in five newspapers in this State, one at least of which shall be published in Jackson, and one in one of the counties through which said road is located.

SEC.19. *Be it further enacted*, That should the securities required of the aforesaid companies, or either of them, depreciate in value after the same are deposited in the treasury of the State, so as to be insufficient to secure

the amount borrowed by either of said companies, then, although the interest on the sum so borrowed may be promptly paid by such company, yet it shall be lawful for any succeeding legislature of this State to require of such company additional and sufficient security to render safe the principal borrowed by such company, and upon the failure to provide such additional security within such time as may be prescribed, the whole debt of such company shall at once become due, and payment of the same may be enforced in the manner prescribed in the preceding section of this act.

SEC.20. *Be it further enacted*, That the money so loaned to said railroad companies shall be expended by them respectively upon such portions of their several roads as are within the limits of this State and that loaned to the New Orleans, Jackson & Great Northern Railroad Company, and the proceeds of the land scrip received by said company under the provisions of this act, shall be expended by said company upon that portion of their road south of the town of Canton, in Madison county, of this State, and any of said companies violating the provisions of this section, shall forfeit its right to any further loan that it might otherwise be entitled to under the provisions of this act.

SEC.21. *Be it further enacted*, That each and all of said companies as shall avail themselves of the provisions of this act, shall receive on their roads respectively, freighted cars from any railroad connecting therewith in this State, and transport the same, without delay, over said road, without changing the load or loads thereof, and return said cars to the place from whence they were taken, on the return trip of the same train, if practicable; and for each freighted car so received, said company receiving the same shall place at the disposal of the company from which the freighted cars were taken, an equal number of empty cars, if within its power, and the charge for transporting the freight contained in said car or cars shall not exceed the amount or price charged for similar freight transported by such company in its own cars, the same distance, over the same portions of their road: *Provided*, That no com-

pany shall be required to receive such cars on their road unless constructed of the same gauge with their own, and are, in the opinion of their superintendent or agent, in good condition, and of sufficient strength to perform the trip required; nor shall any company be required to receive and transport the cars of any other company to the exclusion of its own.

SEC.22. *Be it further enacted*, That should either of the four railroad companies named in this act fail or refuse, for the space of sixty days after the passage of the same to apply for its rateable share of the loan herein provided for, and upon the terms and conditions herein above stipulated, then it shall be the duty of the auditor of public accounts to divide and loan the share so refused by such company or companies, in equal parts, among the other companies named in this act, that may comply with the provisions of the same.

SEC.23. *Be it further enacted*, That any of the railroad companies named in this act shall borrow or receive money under the provisions of the same shall be held to have accepted, and to be bound by all of its provisions and requisitions as fully, to all intents and purposes as though they were a part of the original charter of such company.

SEC.24. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

APPROVED March 7, 1856.

1859 Miss. Laws 193 ch. CXXVIII.

AN ACT to amend an act to provide for the payment of interest on the Chickasaw School Fund, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the time for issuing and locating scrip on the internal improvement lands, for the benefit of the New Orleans, Jackson and Great Northern Railroad, and the Mississippi Central Railroad, under the provisions of said act, be and the same is hereby extended for the period of five years from and after the expiration of the time provided in said act.

SEC.2. *Be it further enacted*, That this act take effect and be in force from and after its passage.

APPROVED, Feb. 11, 1860.

1888 Miss. Laws 43 ch. XXIV

AN ACT to reduce the rate of interest on the Chickasaw School Fund.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the rate of interest on the Chickasaw School Fund be and is hereby fixed at seven (7) per cent. interest per annum, and all acts and parts of acts in conflict with this act be and the same are hereby repealed, and this act shall take effect from and after the first (1st) day of May, 1888.

APPROVED, March 9, 1888.

1985 Miss. Laws 27 ch. XXIII.

AN ACT TO PROVIDE A FORMULA FOR THE DETERMINATION OF THE AMOUNT OF FUNDS TO BE APPROPRIATED ANNUALLY INTO THE CHICKASAW SCHOOL FUND; TO PROVIDE FOR THE DISTRIBUTION OF SUCH FUND BY THE STATE DEPARTMENT OF EDUCATION TO THE SCHOOL DISTRICTS IN CHICKASAW COUNTIES; TO REQUIRE BOARDS OF EDUCATION TO SETTLE TITLE TO ANY REMAINING CHICKASAW LANDS; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. (1) Beginning with the 1985-1986 fiscal year the Legislature of the State of Mississippi shall appropriate to the State Department of Education a sum of One Million Dollars (\$1,000,000.00) to be dispursed to the Chickasaw counties, and an additional One Million Dollars (\$1,000,000.00) each succeeding fiscal year thereafter until a maximum appropriation of Five Million Dollars (\$5,000,000.00) is made for the fiscal year 1989-1990. Beginning with the appropriation for the 1990-1991 fiscal year, the amount appropriated under the provisions of this act shall not exceed the total average annual expendable revenue per teacher unit received by the Choctaw counties from school lands, or Five Million Dollars (\$5,000,000.00), whichever is the lesser.

(2) The State Department of Education is hereby authorized, empowered and directed to allocate for distribution such funds appropriated each year under subsection (1) of this section in proportion to the number of teacher units allotted under the minimum program, to such school districts affected by the sale of Chickasaw cession school lands. School districts not wholly situated in Chickasaw cession affected territory shall receive a prorated amount of such allocation based on the percentage of such lands

located within the district. Provided further, that the State Department of Education shall in addition deduct from each affected school district's allocation the amount such district shall receive from interest payments from the Chickasaw School Fund under Section 212, Mississippi Constitution of 1890 for each fiscal year. The total number of teacher units in the Chickasaw counties shall be computed by the State Department of Education. The department shall document the foregoing computation in its annual budget request for the appropriation to the Chickasaw School Fund, and shall revise its budget request under such formula as the average annual revenues from sixteenth section school lands fluctuate.

SECTION 2. In no event shall any sums to be paid to the Chickasaw counties on schools therein pursuant to Section 212, Mississippi Constitution of 1890, be reduced by operation of this act to an amount below that required by Section 212. It is the intent of the Legislature to increase the annual appropriation to the Chickasaw counties in order to equitably compensate them for each acre of sixteenth section land which they have lost through sale by the state.

SECTION 3. Notwithstanding the provisions of Section 29-1-63, it shall be the duty of the county board of education in any county within the Chickasaw cession to ascertain whether or not such county has title to any Chickasaw lands to which it may, by law, be entitled by virtue of long-term leases. If it is determined that any such land does exist, the board shall proceed to settle the title to such property and, if possible, lease the land pursuant to the provisions of Chapter 3, Title 29, Mississippi Code of 1972, applicable to the management of sixteenth section and lieu lands.

SECTION 4. This act shall take effect and be in force from and after July 1, 1985.

APPROVED: March 26, 1985